

No. 10325

United States
Circuit Court of Appeals

For the Ninth Circuit.

H. HARRY MEYERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Four Volumes

VOLUME I

Pages 1 to 494

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Southern Division

FILED

APR 17 1944

PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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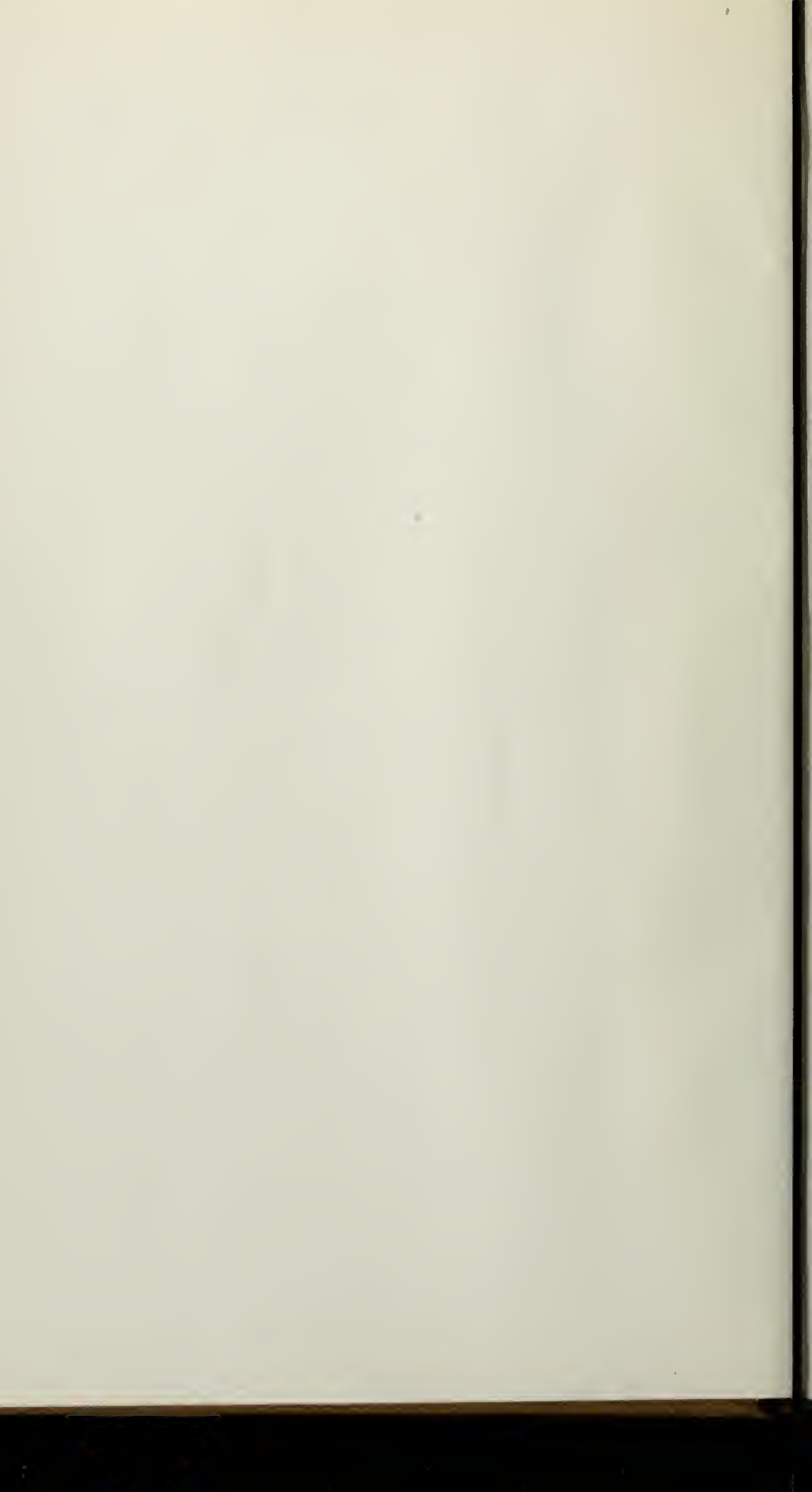
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ATTORNEYS OF RECORD

J. CHARLES DENNIS, United States Attorney,
Tacoma, Washington

G. D. HILE, Assistant United States Attorney,
Seattle, Washington

HARRY SAGER, Assistant United States Attorney,
Tacoma, Washington

JOHN S. SWENSON, Special Attorney, Department of Justice, Seattle, Washington

Attorneys for Plaintiff and Appellee.

BERTIL E. JOHNSON,
Rust Building, Tacoma, Washington,
Attorney for Defendant and Appellant.

United States District Court, Western District of
Washington, Southern Division, July Term,
1938

No. 15187

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSHUA F. SIMONS, Alias James F. Simons,
Alias Jim Simons, MILTON SIMONS, WIL-
LIAM MARKOWITZ, SAMUEL MAR-
KOWITZ, Alias "Derby" Markowitz, H.
HARRY MEYERS, WILLIAM A. BROOME,
LOUIS ROTH, ISADORE B. TAUB, and
PAT ROBKINS,

Defendants,

INDICTMENT

United States of America
Western District of Washington
Southern Division—ss.

Violation Sections 338 and 88, Title 18
United States Code; and Section 17 (a)
(1) of the Securities Act of 1933, as
amended.

The grand jurors of the United States of
America being duly selected, impaneled, sworn, and
charged to inquire within and for the Southern
Division of the Western District of Washington,
upon their oaths present: [1*]

*Page numbering appearing at foot of page of original certified
Transcript of Record.

COUNT I.

That Joshua F. Simons, otherwise known as James F. Simons and Jim Simons, Milton Simons, William Markowitz, Samuel Markowitz, otherwise known as "Derby" Markowitz, H. Harry Meyers, William A. Broome, Louis Roth, Isadore B. Taub, and Pat Robkins, the more full and true name of each of whom is to the grand jurors unknown, and each of them, all hereinafter in the several counts of this indictment called defendants, heretofore and prior to the several acts of using the United States mails hereinafter set forth, had devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises from a class of persons whom they might induce to invest in one or more oil promotion enterprises in the States of Washington and California, all of such class of persons being hereinafter in the several counts of this indictment called investors, which scheme and artifice was then and there in substance and effect as follows, to-wit:

The said defendants, all having been residents of the State of California, would proceed to the State of Washington and acquire and procure the assignment to themselves and to corporations organized and controlled by them, of certain oil and gas leases covering approximately one hundred and thirty-five thousand (135,000) acres of land in Grant, Adams and Franklin Counties, in the State of Washington, and would proceed to organize, control and operate on the basis thereof four interallied corporations,

to-wit, the Peoples Gas and Oil Company, the peoples Gas and Oil Corporation, the Peoples Gas and Oil Development Company, and the Peoples Drillers, Inc., and through the said corporations as instruments of operation, would conduct a campaign for [2] the sale to the said investors of small fractional parts or units of such leases and would collect from the said investors in the aggregate vast sums of money in payment therefor and would incite and entice the said investors into purchasing such fractional parts or units of said leases by alluring, misleading and false pretenses, representations and promises, skilfully and adroitly calculated to arouse in the said investors hopes and expectations of profit from such investments far beyond the limits warranted by the existing conditions; and in order to enable them to sell such units or fractional parts of leases to many thousands of small investors and to collect from said investors several million dollars in payment therefor, the said defendants would start and continue to drill a well in the said district and would sell such units or small fractional parts of said leases on false and fraudulent pretenses, representations and promises as to the motive and purpose on the part of said defendants in coming from the State of California to the State of Washington on such an enterprise, as to the part the said defendant H. H. Meyers was taking therein, as to the alleged standing and experience of the said defendant Meyers in the financial and business world, his previous accomplishments in great public enterprises, his alleged great

wealth and his guarantee that he would out of his own personal funds pay all expenses of drilling the said well; as to the motive and purpose in offering the lease units for sale only to the citizens of the State of Washington, as to alleged acreage holdings of the said defendants adjoining producing wells in another district, as to the an alleged advisory board of eminent geologists and petroleum engineers [3] under whose advice the said defendants would claim to be operating, as to the alleged experience and qualifications of the said defendant William A. Broome as a geologist and petroleum engineer, as to showings of oil or gas alleged to have been encountered, as to prospects impending for striking oil or gas and making said investors wealthy, and generally as to the great desirability of an investment in the small units or fractional parts of the said leases; and such enticing, misleading and false pretenses, representations and promises being in substance and effect as follows, to-wit:

1. That the said defendants had come up to the State of Washington from California for the purpose of developing the natural resources of the former State; that they were proud to have become citizens of this State and to help develop its oil resources; that the State of Washington had oil bearing fields as well as California and that they had come here to open them up; that the people of Washington had for too long been obliged to pay tribute to California for their oil; that the time had come to quit sending their money to that State and

that they, the said defendants, had come to help the people of Washington keep their money at home by developing their own natural resources; whereas, in truth and in fact, as the said defendants then and there well knew, the said defendants had come from California to the State of Washington because they believed conditions in this State warranted an oil stock promotion, and they, the said defendants, came to the State of Washington for the purpose of devising and conducting an alluring selling scheme on a large scale through which [4] they would be able to collect from the said investors in the State of Washington great sums of money, and the declared purpose and effort to find oil or gas here would be and was entirely subordinate and secondary; the said defendants had no experience in developing oil or gas resources.

2. That the said defendant H. Harry Meyers was a very wealthy man, many times a millionaire, a shrewd businessman and builder of wide experience and well qualified to determine the best opportunities for investment for himself; that he had made a careful investigation of the Frenchman Hills district and had become thoroughly convinced that said district contained a great oil bearing structure, requiring only development to turn it into one of the world's greatest oil fields; that so thoroughly convinced had the said defendant Meyers become of the vast potentialities of the said field that he had decided to pay out of his own ample funds all the costs of drilling the first oil well in the said district; that he was so paying out

of his own funds all drilling expenses and would so continue until the well had been completed, and in the event the first well was not successful, he, the said defendant, would continue if necessary to drill additional wells, and that the offer to small investors to become interested with him in such enterprise by purchasing gas and oil leases in the district was an excellent opportunity for common people to join a great business man in a great and highly promising venture; whereas, in truth and in fact, as the said defendants then and there well knew, the said defendant H. Harry Meyers was not a very wealthy man, was not a millionaire, and had not through investigation ascertained that [5] there was a great opportunity to develop an oil field on Frenchman Hills; he was not paying all the expenses of drilling the first well out of his own personal funds and would not so complete the first well, and investors were not justified on the basis of his previous experience in joining him in the oil promotion on Frenchman Hills, and the opportunity to do so was not one of value to the investors.

3. That the said defendant Meyers was a principal in the great engineering firm of Joseph B. Strauss and associates of San Francisco, builders of the Golden Gate Bridge; that he was entitled to chief credit for developing and executing the great Golden Gate Bridge enterprise and that when a business man and engineer of such standing was spending his own money in the oil and gas enterprise on Frenchman Hills, small investors could feel certain such enterprise was of the highest

merit; whereas, in truth and in fact, as the said defendants then and there well knew, the said defendant Meyers was not a principal in nor connected with the engineering firm of Joseph B. Strauss and associates, was not entitled to the chief credit or any credit for developing and building the Golden Gate Bridge, and the fact that he was interested in the Frenchman Hills oil and gas enterprise afforded no assurance to the investors that the said enterprise was of any merit whatsoever, the said defendant being far more interested in the success of the selling campaign than in finding gas or oil.

4. That the units of oil leases in the district concerned were offered only to citizens in the State of Washington because the defendants wished to help the citizens of this State alone and wished to create an oil con- [6] sciousness among the people of this State so that when the great oil field should be brought in and the large oil companies in California, realizing that they were about to lose their lucrative business in this State, should turn their powerful resources into a war on the said defendants and their enterprise, the said defendants thus would have the citizens and the Legislature of this State strongly behind them, enabling them to overcome such sinister opposition and make the State of Washington and its citizens independent of California and the great oil companies intrenched there; whereas, in truth and in fact, as the said defendants then and there well knew, the said defendants would not and did not confine their sales

campaign to the State of Washington for the purpose of benefiting the people of this State, but only for the purpose of so doing an intrastate business alone and thus avoiding application against them of the National Securities Act; the said defendants were not endeavoring to create an oil consciousness and goodwill among the people of the State of Washington for the purpose of enabling them successfully to fight the great oil companies; there was no prospect of any such great contest with other oil companies and the said defendants well knew that there was no need of any such preparation since the chances of finding oil were too remote, and the said defendants were interested in the sale of leases rather than in producing oil, and drilling operations were conducted by them principally for the purpose of arousing credulity among the investors and so enabling the said defendants to collect from said investors greater sums of money. [7]

5. That since all the money necessary for drilling the first well in the Frenchman Hills district would be and was furnished by the said defendant Meyers, the net proceeds of the sale of leases in the district would be used for the development of the Frenchman Hills area and other districts in this State, and that at least six wells would be so provided for and drilled; whereas, in truth and in fact, as the said defendants then and there well knew and intended, the money collected by them on the said Frenchman Hills lease selling campaign would not be used for developing the Frenchman Hills

area or other districts in the State of Washington and that six wells would not be provided for and drilled, but the said defendants would, after the funds they had collected in the sale of said leases should be dissipated, used and diverted, organize further selling campaigns for the purpose of collecting additional money from credulous investors.

6. That the said defendant William A. Broome was a geologist and petroleum engineer and had a large and successful experience as such in other oil and gas fields, and was thoroughly qualified to be in charge of oil and gas drilling operations; and that as a geologist and petroleum engineer, was fully convinced of the ultimate success of the development of the Frenchman Hills enterprise; whereas, in truth and in fact, as the said defendants then and there well knew, the said defendant William A. Broome was not a geologist and petroleum engineer, nor did he have any experience whatsoever as a petroleum engineer and geologist, and was not qualified at all to be in charge of oil and gas operations. [8]

7. That showings and prospects developed in the drilling operations at Frenchman Hills were highly encouraging; that at a certain stage in the drilling operations of the well being drilled a petroleum gas bearing formation had been encountered, with gas rich in gasoline and highly promising of great success for the enterprise; whereas, in truth and in fact, as the said defendants then and there well knew, there had not been encountered any petroleum gas bearing formation whatsoever and no gas had

been found, rich in gasoline or otherwise, in the well being drilled, promising any success in the enterprise.

8. That the said Peoples Gas and Oil Development Company had in its service a highly qualified advisory board composed of prominent petroleum geologists and engineers, that such board was composed of the following:

Dwight C. Roberts

George H. Doane

Ward B. Blodgett;

whereas, in truth and in fact, as the said defendants then and there well knew, there was at the time the said representation was made, no geological advisory board or committee and the said Dwight C. Roberts, George H. Doane and Ward B. Blodgett were not members thereof but such representation was made only for the purpose of creating in the minds of the said investors confidence in the enterprise and so enabling the said defendants to collect from the said investors larger sums of money. [9]

10. That late in 1935 conditions at the well being drilled were so promising as to make practically certain that oil would be encountered before Christmas of that year; that investors in fact could depend on receiving income from their investments before that day; that therefore they need not buy cheap Christmas presents at that time, since they would be rich before Christmas day would arrive; whereas, in truth and in fact, as the said defend-

ants then and there well knew, there was no prospect of any oil before Christmas 1935 or at any time, conditions at said time were in nowise promising and there was no chance whatever of any return to investors from which they could purchase Christmas presents of any kind at any time.

And the grand jurors aforesaid present and say that all of the foregoing pretenses, representations and promises were in substance, effect and purpose deceptive, false and fraudulent, and were to be made and were made both by the said defendants themselves and by other officers and sales agents of the aforesaid corporations; and it was an important part of the said scheme and artifice that such deceitful, false and fraudulent pretenses, representations and promises should and would be made throughout the sales campaign not only by the said defendants themselves but by other officers and sales agents of the aforesaid corporations and agencies organized and to be organized by the defendants, and the [10] said defendants would induce the officers and sales agents of the aforesaid corporations and agencies to communicate to investors and prospective investors such deceitful, false and fraudulent pretenses, representations and promises, all for the purpose and with the intent on the part of the said defendants of obtaining thereby from many thousands of the said investors numerous sums of money and property aggregating a vast amount; and the said defendants so would, did and intended to defraud the said investors.

And it was a part of the said scheme and artifice that the said defendants from time to time would hold open meetings with investors and prospects at which meetings the said defendants would make public addresses, representing and pretending that prospects for oil in the well being drilled were highly promising; that splendid progress was being made; that since the defendant Meyers was furnishing all the money for the drilling operations, the well was certain to be finished; that when the well should come in, the leases held by investors would become highly valuable and investors would make great profits thereon; that the investment in a lease was a speculation and that one who could not afford to take a chance for the small price of a lease unit was not wanted and should not invest, but that the operations were so fairly conducted and the prospects so good that anyone who could afford to take such a chance and failed to do so ought to have his head examined; whereas, in truth and in fact, as the said defendants then and there well knew, there were no prospects of obtaining oil and gas in commercial quantities at the time such representations were made, or at any time, and prospects [11] for such production were highly remote and unlikely.

It was a further part of the said scheme and artifice that the said defendants would sell the said leases in small units first of five acres per unit and later in units of two and one-half acres; that, although having acquired the acreage without cost, they would start the sale of such units at Ten

(\$10.00) Dollars per acre and from time to time would arbitrarily raise the price successively to Twelve and 50/100 (\$12.50) Dollars, to Seventeen (\$17.00) Dollars, to Nineteen and 50/100 (\$19.50) Dollars, to Twenty-two (\$22.00) Dollars, to Twenty-five (\$25.00) Dollars, and finally to Thirty-five (\$35.00) Dollars per acre, and in connection with each such arbitrary and unwarranted boost in price, would employ high-pressure methods of urging and imploring investors to make further purchases and to secure options at the old price before the impending rise should become effective; whereas, in truth and in fact, as the said defendants then and there well knew, there was no good reason for any such boost in price since the defendants had acquired the leases originally without cost, other than the obligation to drill a well, and there were no favorable developments to warrant any such such price increases, and such successive increases in selling price would be and were adopted only for the purpose of further enticing and hurrying said investors into making further purchases and paying over to the said defendants further sums of money. [12]

And the said defendants would and did by such false and fraudulent pretenses, representations and promises and by such means and methods, induce more than thirty thousand (30,000) investors to subscribe for and purchase, almost entirely on small installment contracts, fractional lease units aggregating almost three million dollars, but later would

solicit and induce such lease purchasers to exchange their lease holdings for shares of stock of the said Peoples Gas and Oil Development Company, the said company increasing its capital stock for such purpose; and the said defendants so would, did and intended to defraud the said investors.

It was a further part of the said scheme and artifice that the said defendants would appropriate large sums of money as dividends declared by the said Peoples Gas and Oil Company and in the form of high salaries and commissions and would send great amounts of such funds to Los Angeles for deposit in banks in that city, and in order to conceal and make impossible the tracing and showing disposition of such funds, the said defendants would and did draw great sums thereof in currency instead of using checks as in usual and ordinary business transactions and would and did so conceal their transactions and the disposition of funds drawn by them, to prevent accounting therefor.

It was a further part of the said scheme and artifice that the said defendants would manipulate the books of accounts of the companies organized by them and of [13] California concerns operated by them, so as to conceal the source of the funds obtained by them as capital with which to start the selling campaign, and certain of the said defendants and associates residing in Los Angeles, California, would pretend to have loaned and advanced to the said People Gas and Oil Company sums of money for its original capital and ex-

penditures and in consideration thereof would draw vast sums of money in repayment and as profits, and would conceal the disposition of such sums, all for the purpose of misleading investors and any other person or persons who might seek an accounting and the true disposition of the vast sums collected from the said investors.

It was a further part of the said scheme and artifice that when the collections on the still outstanding Frenchman Hills installment contracts should begin to dwindle, the said defendant Meyers would withdraw from the enterprise and disregard his promise to finish the well or wells on Frenchman Hills at his own expense; the said defendants would induce a number of the said investors to become directors of the said Peoples Gas and Oil Development Company and thereupon would leave the responsibility for further collections and drilling to them.

And it was a further part of said scheme and artifice that after having so collected from the said investors on the said lease and stock selling campaign as much money as they deemed practicable, and having appropriated to themselves as great a part thereof as possible, the said defendants would and did plan a further selling campaign by having the said Peoples Gas and Oil Development Company authorize an issue of two and one-half million dollars face value of "Participations" to be sold to the public, the said [14] defendants representing and pretending that they would from the proceeds thereof drill additional oil wells in certain

other sections of the State and would give previous investors fractional interest therein, new investors purchasing such "Participations" also to have a similar interest in the said Frenchman Hills enterprise; whereas, in truth and in fact, as the said defendants then and there well knew, such additional selling scheme would be devised and developed, first for the purpose of evading and escaping from the promises and agreements made with the lease purchasing investors respecting the well and other development on Frenchman Hills, on which promises the said investors already had paid over to the said defendants approximately two million dollars, and secondly, to enable great additional collection of money from the said investors; and the said defendants planned and schemed so to disregard and avoid their obligations for completing with their own funds the well they had started in the said Frenchman Hills District in furtherance of their lease selling campaign, and to collect from previous and additional investors great additional sums of money from which again to appropriate large parts for their own use and benefit; and the said defendants would, did and intended so to defraud the said investors.

And the said defendants, so having devised and intending to devise the scheme and artifice aforesaid, for the purpose of executing the same and attempting so to do, on or about the fifth day of December, in the year of our Lord, one thousand nine hundred thirty-five, at Puyallup, in the Southern Division of the Western District of Washington [15] and with-

in the jurisdiction of this Court, did then and there knowingly, wilfully, unlawfully and feloniously cause to be delivered by mail, according to the directions thereon, a certain letter in an envelope with proper postage thereon affixed, bearing the return address of the said Peoples Gas and Oil Company, Seattle, Washington, and then and there addressed and directed to

Mr. Rufus Fairbanks
1023-4th Ave. S. E.
Puyallup, Wash.

one of the investors aforesaid, the said letter in the said envelope being then and there in words and figures as follows, to-wit:

Peoples Gas And Oil Co.
Of Washington

Executive Offices	Phone SEneca 4200
Suite 410	Seattle
Fourth & Pike Building	Washington
December 4, 1935	

Mr. Rufus Fairbanks
1023-4th Ave. S. E.
Puyallup, Wash.

Dear Mr. Fairbanks:

We acknowledge with thanks receipt of your contract for a gas and oil lease, and are enclosing herewith your signed copy.

The terms of this contract have been arranged to meet your convenience. Reminders will be mailed to you in ample time advising when your payments will be due. You may make payments to our near-

est office or mail direct to our Executive Offices, whichever you prefer.

It is a great pleasure and source of satisfaction to have you become one of our leaseowners, and we wish to make an earnest plea for your active support and cooperation.

We wish to assure you that a personal visit from you to any of our offices is always welcome, and take this opportunity to thank you for this item of business in the hope [16] that this speculation will prove of mutual benefit.

Very sincerely yours,

“For Oil in Washington”.

PEOPLES GAS AND OIL
COMPANY

J. F. SIMONS

J. F. Simons,

JFS:RM

President.

SPOKANE

Sun Life Bldg.

Riverside 1193.

ABERDEEN

Becker Bldg.

Phone 127

YAKIMA

Miller Bldg.

Phone 8568

VANCOUVER

Arts Bldg.

Phone 148

TACOMA

Washington

Broadway 1251

There being further enclosed in the said envelope a copy of “Contract to Sell and Assign Oil and Gas Lease” dated November 23, 1935 and accepted by the Peoples Gas and Oil Company on December 4, 1935; the said envelope with the said enclosures having lately theretofore, and on or about the 4th

day of December, 1935, been mailed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT II

That the said defendants, being the identical persons named as defendants in the first count of this indictment, and each of them, so having devised and intending to devise the scheme and artifice described in the said first count of this indictment (the full description of which scheme and artifice in said first count being by this reference thereto incorporated herein and made a part of this second count as fully as if here repeated), for the purpose of executing the said scheme and artifice and attempting so to do, on or about the eighteenth day of July, in the year of our Lord, one thousand nine hundred thirty-six, at Steilacoom, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then knowingly, wilfully, unlawfully and [17] feloniously cause to be delivered by mail, according to the directions thereon, a certain letter in an envelope with proper postage thereon affixed, then and there addressed and directed to

Mr. Carl A. Carlson
Box 251
Steilacoom, Wash.

one of the investors aforesaid, the said letter being then and there in words and figures as follows, to wit:

Peoples Gas And Oil Co.
Of Washington

Executive Offices Phone SEneca 4200
Suite 410 Seattle
Fourth & Pike Building Washington

July 17th 1936

Mr. Carl A. Carlson
Box 251
Steilacoom, Wash.

Dear Mr. Carlson. Re: 2 Contracts

We acknowledge with thanks the balance due on your contract to purchase five (5) acres of oil and gas leasehold.

We have been advised by the Peoples Gas and Oil Development Company that you have assigned your lease to them under their "community plan" of development.

Upon receipt of the \$5.00 fee referred to in Paragraph 6 of your contract with us, we shall proceed immediately to make up all of the papers necessary to substantiate the ownership of your rights, and this information will then be recorded in the permanent records of the Peoples Gas and Oil Development Company, who are our agents. You

will shortly thereafter receive direct from them full and sufficient evidence of your right of ownership.

We again thank you for this very pleasant business association, and sincerely trust that your speculation in the purchase of leases on Frenchman Hills may prove to be profitable. [18]

Please be assured that if we are able to be of any service to you in the future, we shall be only too happy to have you call on us.

Very sincerely yours,

PEOPLES GAS AND OIL
COMPANY,

J. F. SIMONS

J. F. Simons,

President.

SPOKANE

Sun Life Bldg.

Riverside 1193.

ABERDEEN

Becker Bldg.

Phone 127

YAKIMA

Miller Bldg.

Phone 8568

VANCOUVER

Arts Bldg.

Phone 148

TACOMA

Washington Bldg.

Broadway 1251

the said letter in the said envelope having lately theretofore, and on or about the seventeenth day of July, 1936, been mailed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid; contrary to the form of the statute in such case made and pro-

vided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT III

That the said defendants, being the identical persons named as defendants in the first count of this indictment, and each of them, so having devised and intending to devise the scheme and artifice described in the said first count of this indictment (the full description of which scheme and artifice in said first count being by this reference thereto incorporated herein and made a part of this [19] third count as fully as if here repeated), for the purpose of executing the said scheme and artifice and attempting so to do, on or about the second day of April, in the year of our Lord, one thousand nine hundred thirty-six, at Tacoma, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then and there knowingly, wilfully, unlawfully and feloniously cause to be delivered by mail, according to the directions thereon, a certain letter in an envelope with proper postage thereon prepaid, then and there addressed and directed to

Christine Lagerstrom

1930 North Anderson

Tacoma, Washington

one of the investors aforesaid, the said letter in the said envelope being then and there in words and figures as follows, to-wit:

Peoples Gas And Oil Co.
Of Washington

Executive Offices

Phone SEneca 4200

Suite 410

Seattle

Fourth & Pike Building

Washington

April 1, 1936

Christine Lagerstrom
1930 North Anderson
Tacoma, Washington

Dear Madam:

In checking over our records, we find that you have failed to make the payments as agreed to in the contract covering the purchase of a Gas and Oil Lease

For your information, the account is now \$15.00 past due. We have sent you several remind- [20] ers, and can only assume that your failure to take care of this obligation is due to an oversight on your part.

When one installment lapses and another comes along, it becomes difficult to catch up. Yet, if you take care of these payments as they fall due, you avoid the more serious difficulty of making up two or more payments.

We, therefore, ask that you kindly give this matter your immediate attention by remitting the above delinquency now, while the matter is fresh in your mind.

Your co-operation in this matter will be greatly appreciated.

Sincerely yours,

“For Oil in Washington”

PEOPLES GAS AND OIL
COMPANY

D. BURNIGHT

D. Burnight

Auditing Department

SPOKANE

Sun Life Bldg.
Riverside 1193

ABERDEEN

Becker Bldg.
Phone 127

YAKIMA

Miller Bldg.
Phone 8568

VANCOUVER

Arts Bldg.
Phone 148

TACOMA

Washington
Broadway 1251

the said letter in the said envelope having lately theretofore, and on or about the first day of April, 1936, been mailed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: [21]

COUNT IV.

That the said defendants, being the identical persons named as defendants in the first counts of this

indictment, and each of them, so having devised and intending to devise the scheme and artifice described in the said first count of this indictment (the full description of which scheme and artifice in said first count being by this reference thereto incorporated herein and made a part of this fourth count as fully as if here repeated), for the purpose of executing the said scheme and artifice and attempting to do, on or about the tenth day of September, in the year of our Lord, one thousand nine hundred thirty-seven, at Tacoma, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then and there knowingly, wilfully, unlawfully and feloniously cause to be delivered by mail, according to the directions thereon, a certain letter, then and there addressed and directed to

Miss Marion B. Jaycox,
237 St. Helens Ave.,
Tacoma, Washington

one of the investors aforesaid, the said letter being then and there in words and figures as follows, to-wit:

Peoples Gas And Oil Development Co
of Washington

Executive Offices

Phone SEneca 4200

Suite 410

Seattle

Fourth and Pike Bldg.

Washington

Sept. 9th, 1937

Miss Marion B. Jaycox,
237 St. Helens Ave.,
Tacoma, Wn.

Dear Miss Jaycox:

In checking our records, we find that you have failed to make the payments as agreed to in [22] the contract entered into with the Peoples Gas and Oil Company covering the purchase of gas and oil leasehold acreage on Frenchman Hills.

As you are, undoubtedly, aware, the account is now \$127.00 bal. past due. You have been sent several reminders, and we can only assume that your failure to take care of this obligation is due to an oversight on your part.

When one installment lapses and another comes along, it becomes increasingly difficult to catch up. Yet, if you take care of these payments as they fall due, you avoid the more serious difficulty of making up two or more payments. The chief essential in retaining contracts in good standing is regular monthly payments.

We, therefore, ask that you kindly give this matter your immediate attention by remitting the above delinquency now while the matter is fresh in your mind.

Your cooperation in this matter will be greatly appreciated.

With all good wishes, and awaiting an early remittance, we are

Very sincerely yours,

PEOPLES GAS AND OIL DEVELOPMENT CO.

D. BURNIGHT

D. Burnight

Auditing Department

Now Drilling "Donnie Boy No. 1," Frenchman Hills, Grant County, Wash.

The said letter having lately theretofore, and on or about the ninth day of September, 1937, been mailed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

[23]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT V.

That the said defendants, being the identical persons named as defendants in the first count of this indictment, and each of them, so having devised and intending to devise the scheme and artifice described in the said first count of this indictment

(the full description of which scheme and artifice in said first count being by this reference thereto incorporated herein and made a part of this fifth count as fully as if here repeated), for the purpose of executing the said scheme and artifice and attempting so to do, on or about the twenty-fifth day of January, in the year of our Lord, one thousand nine hundred thirty-six, at Kelso, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then and there knowingly, wilfully, unlawfully and felonously cause to be delivered by mail, according to the directions thereon, a certain publication entitled "Peoples Progress", being issue Number 5, Volume I, of the said publication, dated January 24, 1936, with proper postage thereon prepaid, the said publication being then and there addressed and directed to

George P. Helm

1007 North 1st

Kelso, Washington

one of the investors aforesaid, the said publication having lately theretofore, and on or about the twenty-fourth day of January, 1936, been mailed by the said defendants in the [24] United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT VI.

That the said defendants, being the identical persons named as defendants in the first count of this indictment, and each of them, so having devised and intending to devise the scheme and artifice described in the said first count of this indictment (the full description of which scheme and artifice in said first count being by this reference thereto incorporated herein and made a part of this sixth count as fully as if here repeated), for the purpose of executing the said scheme and artifice and attempting so to do, on or about the twelfth day of January, in the year of our Lord, one thousand nine hundred thirty-six, at Tacoma, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then and there knowingly, wilfully, unlawfully and feloniously cause to be delivered by mail, according to the directions thereon, a certain letter in an envelope with proper postage thereon prepaid, then and there addressed and directed to

Christine Lagerstrom

1930 No. Anderson

Tacoma, Washington [25]

one of the investors aforesaid, the said letter in the said envelope being then and there in words and figures as follows, to-wit:

Peoples Gas and Oil Co
of Washington

Executive Offices

Phone SEneca 4200

Suite 410

Seattle

Fourth & Pike Building

Washington

January 11th, 1936

Christine Lagerstrom

1930 No. Anderson

Tacoma, Washington

Dear Madam:

We have sent you several reminders calling your attention to the past-due payments on your contract, which at this writing amount to \$15.00 but to date have received no reply. We are quite at a loss to understand the seeming lack of interest on your part, but feel it is only fair to you that we should again call this matter to your attention.

Undoubtedly, there must be some definite reason in your mind for your failure to meet your payments. Whatever this reason may be, I am sure that if you will call at any of our offices, or write directly to our Executive Office—frankly stating your reasons—they can be adjusted to your entire satisfaction. Don't forget . . . "A good heart-to-heart talk" will usually find a satisfactory solution to your problem.

We feel that you, as a citizen of our Great Evergreen Empire, are greatly interested in our work, and want to continue as a part of our Program. However, we do not want to influence you in any way to carry on with this speculation. Therefore,

if you are interested in continuing with your lease
—and we certainly hope that you are—we would appreciate your contacting us immediately, in order that we may co-operate with you in every possible way.

Should we fail to hear from you in this matter within the next ten days, we can only assume [26] that you do not wish to retain your holdings in Frenchman Hills, and we shall, therefore, have no other alternative except to cancel your contract, as much as we would regret having to take such action.

Thanking you for your expected reply, we are
Sincerely yours,

“For Oil in Washington.”

PEOPLES GAS AND OIL
COMPANY

J. F. SIMONS

Final Notice	J. F. Simons, President	
Spokane		Aberdeen
Sun Life Bldg.		Becker Bldg.
Riverside 1193		Phone 127
Yakima	Vancouver	Tacoma
Miller Bldg.	Arts Bldg.	Washington
Phone 8568	Phone 148	Broadway 1251

The said letter having lately theretofore, and on or about the eleventh day of January, 1936, been mailed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon,

as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT VII.

That the said defendants, being the identical persons named as defendants in the first count of this indictment, and each of them, so having devised and intending to devise the scheme and artifice described in the said first [27] count of this indictment (the full description of which scheme and artifice in said first count being by this reference thereto incorporated herein and made a part of this seventh count as fully as if here repeated), for the purpose of executing the said scheme and artifice and attempting so to do, on or about the ninth day of July, in the year of our Lord, one thousand nine hundred thirty-six, at Tacoma, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then and there knowingly, wilfully, unlawfully and feloniously cause to be delivered by mail, according to the directions thereon, a certain letter in an envelope, with proper postage thereon prepaid, then and there addressed and directed to

Mr. Clinton Brink
4521 So. Jay St.
Tacoma, Washington

one of the investors aforesaid, the said letter in the said envelope being then and there in words and figures as follows, to wit:

Peoples Gas and Oil Development Co.
of Washington

Executive Offices: Phone: SEneca 4200
Suite 410 Seattle
Fourth and Pike Bldg. Washington

July 8, 1936

Mr. Clinton Brink
4521 So. Jay St.
Tacoma, Washington

Dear Friend and Partner:

Under the Assignment and Agreement heretofore executed with this company, you have agreed to turn over to us for development purposes the leasehold [28] acreage which you purchased from the Peoples Gas and Oil Company, and you are, therefore, entitled to a fully participating interest in our "Community Plan of Development".

The executed copy of the "Assignment and Agreement" heretofore delivered has up to now been the only evidence of these participating rights, but to many people this has not been satisfactory for the reason that in case of the sale of all or part of such rights, they were called upon to undergo considerable expense and were confronted with a great deal of red-tape and all sorts of complicated legal requirements, necessitating, in many instances, long and intolerable delays.

It has always been my sincere wish that nothing be left undone which would tend to serve the best interests of the P. G. & O. Program, as well as the greater convenience of my partners, and I certainly feel that all of my partners, including yourself, are entitled to a different and more easily negotiable evidence of their rights, free from any costly red-tape.

In order to bring this about without changing in any way the respective interests of all parties concerned, this company has been converted into a leaseholders' company. The actual drilling operations have been transferred to a company, formed by Dr. Meyers and myself, and known as "Peoples Drillers, Inc." Under this arrangement, no one may be in the Development Company except owners of participating rights, such as yourself.

The Development Company owns the leases, and the full proportionate share previously agreed upon will be distributed to holders of participating rights, —Namely, Sixty-Five Per Cent of the Net Returns Received From Production—under the same conditions as set forth in the "Assignment and Agreement" which you executed with this company.

In the furtherance of the above plan, the Development Company, by a resolution of its Board of Directors, authorized the issuance to holders of participating rights, residing in the State of Washington, no-par-value shares of the Peoples Gas and Oil Development Company, on the basis of eight (8) shares for each acre assigned, so that each

holder of a participating interest will be certain to receive the number of shares to which he is rightfully entitled, and which in every case will be equivalent to the interests now held under the "Assignment and Agreement" with this company.

These shares are Non-Assessable, and carry full [29] voting privileges, and their issuance has been officially authorized by the Director of the Department of Licenses, State of Washington, under Permit issued on June 15th, 1936.

It gives me great pleasure to advise that at a recent meeting of the Board of Directors, Mr. E. W. Jorgenson, former editor of the Spokane Press of Spokane, Washington—long a champion of the people of our State—was unanimously elected as Vice-President and Treasurer of the Peoples Gas and Oil Development Company. I shall continue to serve my partners in the capacity of President of the Development Company, and shall also continue in direct charge of our operations on Frenchman Hills as Vice-President of Peoples Drillers, Inc.

I should like to point out that in the past, before transfer of a portion or all of a participating right could be completed, it was necessary to make an assignment in triplicate before a Notary Public, incorporating legal descriptions, which frequently had to be passed upon by an attorney; then submitted to an abstractor for his verification, and finally, recorded in the county in which the leasehold is located. Obviously, this procedure not

only entailed considerable expenses, but also required a great deal of time.

I have never lost sight of the important fact that when one of my partners transfers a part of his rights to someone else, a new friend and supporter of the P. G. & O. Program is thereby automatically created, and under the new plan you will be in position to make such transfer on practically a moment's notice by simply signing your name on the reverse side of the certificate in the presence of a witness. This is only one of the many advantages of having in your possession a more negotiable instrument, and is mentioned merely to give you some idea of the benefits to be derived by you.

Please understand that if you prefer you may retain the executed copy of the "Assignment and Agreement" which you now hold as evidence of your ownership of a participating interest. However, in view of the fact that in the acceptance of the above shares your rights are Exactly the Same as you now have, inasmuch as they entitle you to Exactly the Same pro rata returns, I am sure that you will readily recognize the advantages accruing to you under the new arrangement.

Feeling certain that you will unquestionably wish to make this change as soon as possible, I am attaching hereto the proper forms enabling you to receive your certificate for the number of shares to which you are entitled. If you are married, please note that it is essential for both husband and wife to sign the blue Assignment Form [30] before a

Notary Public. (If you are unmarried, kindly state whether your status is that of a single person, widow or widower.) The white Conversion Application Form should also be signed by both husband and wife, but the witness to your signatures on this particular document need not necessarily be a Notary Public.

If you will sign the above forms and return to us, Together With the Copy of the "Assignment and Agreement" in Your Possession" we shall have your certificate issued and forwarded to you without delay, and at absolutely no cost to you.

In consideration of the many thousands of interest holders who will, undoubtedly, be anxious to receive their certificates with a minimum of delay, I ask that you send in these three papers immediately, so that our office force may function with the greatest possible efficiency.

A stamped, self-addressed envelope is enclosed for your greater convenience in returning these papers to us.

Thanking you again for the friendship, loyalty and confidence which you have so graciously extended towards our undertaking on Frenchman Hills, and assuring you that I shall always strive to serve the best interests of the P. G. & O. Pro-

gram and all of my partners, I am—with every good wish

Yours sincere friend and partner,

BILL BROOME

William A. Broome,

President,

Peoples Gas and Oil Development Company.

WAB/S

P. S. We have made arrangements with the Peoples Gas and Oil Co. so that you may receive the free services of a Notary Public at any of their offices in the execution of the necessary papers.

there being enclosed with the said letter in the said envelope also an assignment form headed “Peoples Gas and Oil Development Company”, a printed slip containing form for information as to change of address, and a self-addressed business reply envelope of the said Peoples Gas and Oil Development Company; the said letter with the said enclosures in the said envelope having lately there-[31] tofore, and on or about the eighth day of July, 1936, been mailed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT VIII.

That the said defendants, being the identical persons named as defendants in the first count of this indictment, and each of them, so having devised and intending to devise the scheme and artifice described in the said first count of this indictment (the full description of which scheme and artifice in said first count being by this reference thereto incorporated herein and made a part of this eighth count as fully as if here repeated), for the purpose of executing the said scheme and artifice and attempting so to do, on or about the seventeenth day of October, in the year of our Lord, one thousand nine hundred thirty-six, at Tacoma, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then and there knowingly, wilfully, unlawfully and feloniously cause to be delivered by mail, according to the directions thereon, a certain letter in an envelope with proper postage thereon prepaid, then and there addressed [32] and directed to

Mrs. J. M. & Erick P. Anderson
912 N. Junett Street
Tacoma, Washington

investors aforesaid, the said letter in the said envelope being then and there in words and figures as follows, to wit:

Peoples Gas and Oil Co.
of Washington

Executive Offices

Phone SEneca 4200

Suite 410

Seattle

Fourth & Pike Building

Washington

October 16th 1936

Mrs. J. M. & Eric P. Anderson

912 N. Junett Street

Tacoma, Washington

Dear Friends:

We acknowledge with thanks the balance due on your contract to purchase $2\frac{1}{2}$ acres of oil and gas leasehold.

We have been advised by the Peoples Gas and Oil Development Company that you have assigned your lease to them under their "community plan of development" on Frenchman Hills.

Upon receipt of the \$5.00 fee referred to in Paragraph 6 of your contract with us, we shall proceed immediately to make up all of the papers necessary to substantiate the ownership of your rights, and this information will then be recorded in the permanent records of the Peoples Gas and Oil Development Company. You will shortly thereafter be advised by the Peoples Gas and Oil Development Company that the "Assignment and Agreement" heretofore executed with that Company, (a copy of which you now hold), is in full force and effect.

We again thank you for this very pleasant business association, and sincerely trust that your speculation in the purchase of leases on Frenchman Hills may prove to be profitable. [33]

Please be assured that if we are able to be of any service to you in the future, we shall be only too happy to have you call on us.

Very sincerely yours,

PEOPLES GAS AND OIL
COMPANY

J. F. SIMONS

J. F. Simons,
President.

Spokane
Sun Life Bldg.
Riverside 1193

Aberdeen
Becker Bldg.
Phone 127

Yakima
Miller Bldg.
Phone 8568

Vancouver
Arts Bldg.
Phone 148

Tacoma
Washington
Bldg.

Broadway 1251

the said letter in the said envelope having lately theretofore, and on or about the sixteenth day of October, 1936, been mailed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT IX.

That the said defendants, being the identical persons named as defendants in the first count of this

indictment, and each of them, so having devised and intending to devise the scheme and artifice described in the said first count of this indictment (the full description of which scheme and artifice in said first count being by this reference thereto incorporated herein and made a part of this ninth count as fully as if here repeated), for the purpose of executing the said scheme and artifice and attempting so [34] to do, on or about the twenty-fifth day of April, in the year of our Lord, one thousand nine hundred thirty-seven, at Dupont, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then and there knowingly, wilfully, unlawfully and feloniously cause to be delivered by mail, according to the directions thereon, a certain letter in an envelope with proper postage thereon prepaid, then and there addressed and directed to

Mr. Mike Cerro

Dupont, Washington

one of the investors aforesaid, the said letter in the said envelope being then and there in words and figures as follows, to wit:

Peoples Gas and Oil Development Co.
of Washington

Executive Offices:

Phone: Seneca 4200

Suite 410

Seattle

Fourth and Pike Bldg.

Washington

April 23rd, 1937

Mr. Mike Cerro

Dupont, Wash.

Dear Mr. Cerro:

Considerable time has elapsed since you completed the installment payments on your contract originally entered into with the Peoples Gas and Oil Company covering the purchase of gas and oil leasehold acreage on Frenchman Hills. However, you have not as yet remitted the \$5.00 fee referred to in Paragraph 6, which is, of course, a component part of the agreement with you, and we can only assume that the previous letter calling your attention to this matter has failed to reach you.

We are certain that it is your wish to complete all of the terms of the contract, as it is only in this way that your rights may be fully protected. We are quite anxious that this be done without further delay, and ask, therefore, that you kindly forward [35] the above mentioned fee of \$5.00 Immediately upon receipt of this letter. We shall then proceed to make up the necessary documentary evidence and the proper entries will be made in our records to fully substantiate your rights of ownership, thus insuring that the Assignment and Agreement heretofore executed with our company, (a copy of which

you now hold), is in full force and effect. You will be advised accordingly shortly thereafter.

Thanking you for your friendship and good will, and awaiting an early remittance, we are

Very sincerely yours,

PEOPLES GAS AND OIL DE-
VELOPMENT CO.

BILL BROOME

WILLIAM A. BROOME,

President.

Important

Thanks for
your immediate
cooperation.

WAB/R

the said letter in the said envelope having lately theretofore, and on or about the twenty-fourth day of April, 1937, been mailed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT X.

That the said defendants, being the identical persons named as defendants in the first count of this

indictment, and each of them, so having devised and intending to devise the scheme and artifice described in the said first [36] count of this indictment (the full description of which scheme and artifice in said first count being by this reference thereto incorporated herein and made a part of this tenth count as fully as if here repeated), for the purpose of executing the said scheme and artifice and attempting so to do, on or about the twenty-first day of September, the year of our Lord, one thousand nine hundred thirty-seven, at Tacoma, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then and there knowingly, wilfully, unlawfully and feloniously cause to be delivered by mail, according to the directions thereon, a certain letter in an envelope with proper postage thereon prepaid, then and there addressed and directed to

Mrs. Alice R. Jaycox,
Avalon Apts., No. 500,
237 St. Helens Avenue,
Tacoma, Washington

one of the investors aforesaid, the said letter in the said envelope being then and there in words and figures as follows, to wit:

Peoples Gas and Oil Development Co.
of Washington

Office of the President 410 Fourth and Pike
Building
Seattle, Washington
20th September, 1937

Mrs. Alice R. Jaycox,
Avalon Apts., No. 500,
237 St. Helens Avenue,
Tacoma, Washington.

Dear Mrs. Jaycox:

Upon my return to the city this morning, I find your letter of September 8th. [37]

First of all, I should like to make it exceedingly clear to you, Mrs. Jaycox, that the Peoples Gas and Oil Development Company cannot arbitrarily take it upon itself to reduce the amount of leasehold acreage purchased under contracts originally entered into with the Peoples Gas and Oil Company, either by transferring payments from one contract to another or in any other way. All such contracts which are now in our hands constitute assets of this company. The company, as you are aware, is owned by thousands of people throughout the state, and you will understand when I say that we simply cannot take it upon ourselves to do anything which would tend to lessen these assets. Any such action on my part would, in my opinion, be in violation of the very principle of impartiality and equity, and would certainly not be fair to all of those who met their payments promptly and completed all of their contracts in full as agreed.

In the case of Mr. Champlain whom you mentioned in your letter, he first corresponded with the Peoples Gas and Oil Company, and action in his particular case was taken while negotiations were in the process of being completed whereby the Peoples Gas and Oil Development Company actually came into possession of these contracts. Since that time, our Board of Directors have had occasion to consider two or three similar requests and have voted to strictly maintain our policy as outlined in the foregoing paragraph.

There has been no change or reduction in the amount of leasehold acreage purchased by Mr. Perkins, whom you also mentioned.

I hope you will understand our position in this matter. We greatly value your friendship and good will, and sincerely want to help you, but I repeat: in fairness to all concerned, we must uphold our policy of impartial treatment to everyone. We are prepared to live up to the terms and conditions of all contracts which are now in our possession, and naturally expect holders thereof to do the same.

Your cooperation in taking care of the present delinquency in your account and that of Miss Jaycox will be greatly appreciated, and will insure that

your holdings in connection with your contracts are fully protected.

With best wishes,

Yours very sincerely,

WM. A. BROOME

William A. Broome—President,

PEOPLES GAS & OIL DEVELOPMENT CO

WAB*r

Now Drilling "Donnie Boy No. 1," Frenchman Hills, Grant County, Wash. [38]

the said letter in the said envelope having lately theretofore, and on or about the twentieth day of September, 1937, been mailed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT XI.

That the said defendants, being the identical persons named as defendants in the first count of this indictment, and each of them, on or about the seventeenth day of July, in the year of our Lord, one thousand nine hundred thirty-six, at Olympia, in the Southern Division of the Western District of

Washington, and within the jurisdiction of this Court, so having under the circumstances and conditions in the first count of this indictment mentioned devised the said scheme and artifice to defraud in that count described, the allegations of which first count descriptive of said circumstances and conditions and of said scheme and artifice and of the connection of said defendants, and each of them, therewith, are hereby incorporated in this count by reference to said first count as fully as if they were repeated, for the purpose of and with the intent, then and there, on the part of the said defendants of employing the said scheme and artifice knowingly, wilfully, unlawfully and feloniously did in the sale of a security, to wit, [39] the stock of the *People Gas and Oil Development Company*, by the use of the United States mails, employ the said scheme and artifice, the said use of the United States mails being in the manner following, to wit:

The said defendants, on or about the seventeenth day of July, in the year of our Lord, one thousand nine hundred thirty-six, at Olympia, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then and there cause to be delivered by the mails of the United States, according to the directions thereon, a certain letter contained in an envelope with sufficient postage thereon duly affixed, then and there addressed and directed to

Bertha M. Arnold

R. F. D. #1, Box 100

Olympia, Wn.

one of the investors aforesaid, the said letter in the said envelope being then and there in words and figures as follows, to wit:

Peoples Gas and Oil Development Co.
of Washington

Executive Offices:

Suite 410

Fourth and Pike Bldg.

Phone: Seneca 4200

Seattle

Washington

July 16th, 1936.

Bertha M. Arnold

R. F. D. #1, Box 100

Olympia, Wn.

Dear Friend and Partner:

Having completed payments on your contract with the Peoples Gas and Oil Company, the leasehold acreage which you purchased from them has [40] been assigned directly to us, thus avoiding the needless complication of putting it through your name. I am pleased to advise that this now completes our arrangement with you whereby you agreed to turn your lease over to us for development purposes, and enables you to be in our fully participating "Community Plan of Development."

The executed copy of the "Assignment and Agreement" heretofore delivered has up to now been the only evidence of those participating rights, but to many people this has not been satisfactory for the reason that in case of the sale of all or part of such rights, they were called upon to undergo considerable expense and were confronted with a

great deal of red tape and all sorts of complicated legal requirements, necessitating, in many instances, long and intolerable delays.

It has always been my sincere wish that nothing be left undone which would tend to serve the best interests of the P. G. O. Program, as well as the greater convenience of my partners, and I certainly feel that all of my partners, including yourself, are entitled to a different and more easily negotiable evidence of their rights, free from any costly red-tape.

In order to bring this about without changing in any way the respective interests of all parties concerned, this company has been converted into a leaseholders' company. The actual drilling operations have been transferred to a company formed by Dr. Meyers and myself, and known as "Peoples Drillers, Inc." Under this arrangement, no one may be in the Development Company except owners of participating rights such as yourself.

The Development Company owns the leases, and the full proportionate share previously agreed upon will be distributed to holders of participating rights, Namely, Sixty-Five Per Cent of the Net Returns Received From Production,—under the same conditions as set forth in the "Assignment and Agreement" which you executed with this company.

In the furtherance of the above plan, the Development Company, by a resolution of its Board of Directors, authorized the issuance to holders of participating rights, residing in the State of Wash-

ington, no-par-value shares of the Peoples Gas and Oil Development Company, on the basis of eight (8) shares for each acre assigned, so that each holder of a participating interest will be certain to receive the number of shares to which he is rightfully entitled, and which in every case will be equivalent to the interests now held under the "Assignment and Agreement" with this company.

[41]

These shares are Non Assessable, and carry full voting privileges, and their issuance has been officially authorized by the Director of the Department of Licenses, State of Washington, under Permit issued on June 15, 1936.

It gives me great pleasure to advise that at a recent meeting of the Board of Directors, Mr. E. W. Jorgenson, former editor of The Spokane Press of Spokane, Washington—long a champion of the people of our State—was unanimously elected as Vice-President and Treasurer of the Peoples Gas and Oil Development Company. I shall continue to serve my partners in the capacity of President of the Development Company, and shall also continue in direct charge of our operations in Frenchman Hills as Vice-President of Peoples Drillers, Inc.

I should like to point out that in the past, before transfer of a portion or all of a participating right could be completed, it was necessary to make an assignment in triplicate before a Notary Public, incorporating legal descriptions, which frequently had to be passed upon by an attorney; then submitted

to an abstractor for his verification, and finally recorded in the county in which the leasehold is located. Obviously, this procedure not only entailed considerable expense, but also required a great deal of time.

I have never lost sight of the important fact that when one of my partners transfers a part of his rights to someone else, a new friend and supporter of the P. G. & O. Program is thereby automatically created, and under the new plan you will be in position to make such transfer on practically a moment's notice by simply signing your name on the reverse side of the certificate in the presence of a witness. This is only one of the many advantages of having in your possession a more negotiable instrument, and is mentioned merely to give you some idea of the benefits to be derived by you.

Please understand that if you prefer you may retain the executed copy of the "Assignment and Agreement" which you now hold as evidence of your ownership of a participating interest. However, in view of the fact that in the acceptance of the above shares your rights are Exactly the Same as you now have, inasmuch as they entitle you to Exactly the Same pro rata returns, I am sure that you will readily recognize the advantage accruing to you under the new arrangement.

Feeling certain that you will unquestionably wish to make this change as soon as possible, I am attaching hereto the proper form enabling you to receive your certificate for the number of shares

[42] to which you are entitled. If you will sign this form and return to us, Together With the Copy of the "Assignment and Agreement" Now in Your Possession, we shall have your certificate issued and forwarded to you without delay, and at absolutely no cost to you.

In consideration of the many thousands of interest holders who will, undoubtedly, be anxious to receive their certificates with a minimum of delay, I ask that you send in these two papers immediately, so that our office force may function with the greatest possible efficiency.

A stamped, self addressed envelope is enclosed for your greater convenience in returning these papers to us.

Thanking you again for the friendship, loyalty and confidence which you have so graciously extended towards our undertaking on Frenchman Hills, and assuring you that I shall always strive to serve the best interests of the P. G. & O. Program and all of my partners, I am—with every good wish

Yours sincere friend and partner

BILL BROOME

WILLIAM A. BROOME

President

PEOPLES GAS AND OIL DEVELOPMENT COMPANY.

P. S. We have made arrangements with the Peoples Gas and Oil Company so that you may receive the free services of a Notary Public at any of their offices in the execution of the necessary papers.

WAB-S

the said letter in the said envelope having lately theretofore, and on or about the sixteenth day of July, 1936, been mailed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid.

All of which said acts of said defendants were against the peace and dignity of the United States of [43] America, and contrary to the form of the statute in such case provided, to-wit, Section 17 (a) (1) of the Securities Act of 1933, as amended (Section 77q (a) (1), Title 15, U. S. C. A.).

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT XII.

That the said defendants, being the identical persons named as defendants in the first count of this indictment, and each of them, on or about the tenth day of December, in the year of our Lord, one thousand nine hundred thirty-five, at Tacoma, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, so having under the circumstances and conditions in the first count of this indictment mentioned, devised the said scheme and artifice to defraud in that count described, (the allegations of which first count descriptive of said circumstances and conditions, and of said scheme and artifice, and of the connection of the said defendants, and each of them,

therewith, are hereby incorporated in this count by reference to said first count as fully as if they were here repeated), then and there did knowingly, wilfully, unlawfully and feloniously employ the said scheme and artifice in the sale of a security by the use of the mails; that is to say, the said defendants did then and there employ the said scheme and artifice in the sale by the use of the mails to Mrs. J. M. Anderson and Mr. Eric P. Anderson, Tacoma, Washington, being of the investors aforesaid, of a "unit" or fractional part of an oil and gas lease covering acreage acquired by the said defendants in the Frenchman [44] Hills district as in the said first count of this indictment mentioned, the said unit entitling the said investors also to participate with other similarly situated investors in the profits of a community plan of operations, the said use of the mails being then and there in the manner following, to-wit:

The said defendants, on or about the tenth day of December, in the year of our Lord, one thousand nine hundred thirty-five, at Tacoma, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, did then and there cause to be delivered by the mails of the United States, according to the directions thereon, a certain letter contained in an envelope, with sufficient postage thereon duly affixed, then and there addressed and directed to

Mrs. J. M. Anderson &

Mr. Eric P. Anderson

912 N. Junett St.

Tacoma, Wn.

they being of the investors aforesaid, the said letter in the said envelope being then and there in words and figures as follows, to-wit:

Peoples Gas and Oil Co.
Of Washington

Executive Offices

Phone SEneca 4200

Suite 410

Seattle

Fourth & Pike Building

Washington

December 9, 1935

Mrs. J. M. & Mr. Eric P. Anderson

912 North Junett Street

Tacoma, Washington

Dear Mr. & Mrs. Anderson:

We acknowledge with thanks receipt of your contract for a gas and oil lease, and are enclosed [45] ing herewith your signed copy.

The terms of this contract have been arranged to meet your convenience. Reminders will be mailed to you in ample time advising when your payments will be due. You may make payments to our nearest office or mail direct to our Executive Offices, whichever you prefer.

It is a great pleasure and source of satisfaction to have you become one of our leaseowners, and we wish to make an earnest plea for your active support and cooperation.

We wish to assure you that a personal visit from you to any of our offices is always welcome, and take this opportunity to thank you for this item

of business in the hope that this speculation will prove of mutual benefit.

Very sincerely yours,

"For Oil in Washington."

PEOPLES GAS AND OIL
COMPANY,

J. M. SIMONS

J. F. Simons, President.

JFS:VT

Spokane
Sun Life
Riverside
1193

Aberdeen
Becker Bldg.
Phone 127

Yakima Vancouver
Miller Bldg. Arts Bldg.
Phone 8568 Phone 148

Tacoma
Washington
Bldg.
Broadway
1251

there being enclosed also together with the said letter in the said envelope a copy of a contract for the sale and assignment of a portion of a lease held by the said Peoples Gas and Oil Company, which contract was dated November 22, 1935, and accepted by the said Peoples Gas and Oil Company on December 9, 1935, which contract was then and there between the said Peoples Gas and Oil Company, as seller, and the said Mr. and Mrs. Eric Anderson, as purchasers, the said seller agreeing to sell to the said purchasers, and the said purchasers agreeing to purchase an assignment from the said Peoples Gas and Oil Company of all its right, title and interest in and to a portion of that [46] one certain

great deal of red tape and all sorts of complicated oil and gas lease which covered, in addition to the said portion, certain other lands, said assignment applying to and affecting only the following described tract of land:

SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 31, T. 16 N., R. 25, E. W. M., containing two and one-half (2 $\frac{1}{2}$) acres, more or less, situate in Grant County, State of Washington,

at an agreed price of Sixty-two and 50/100 (62.50) dollars; the said letter with the said enclosures having lately theretofore, and on or about the ninth day of December, 1935, been placed and caused to be placed by the said defendants in the United States Post Office at Seattle, Washington, to be sent and delivered by the Post Office establishment of the United States according to the directions thereon, as aforesaid.

All of which said acts of said defendants were against the peace and dignity of the United States of America, and contrary to the form of the statute in such case provided, to-wit, Section 17 (a) (1) of the Securities Act of 1933, as amended (Section 77q (a) (1), Title 15 U. S. C. A.)

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT XIII.

That the said defendants, being the identical persons named as defendants in the first count of this indictment, and each of them, continuously during a period of [47] time extending from on or about the twenty-seventh day of March, in the year of

our Lord, one thousand nine hundred thirty-four, to on or about the twenty-second day of October, in the year of our Lord, one thousand nine hundred thirty-seven, at Tacoma, Olympia, Aberdeen, Vancouver, and divers other places to the grand jurors unknown, all in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, and at Seattle, Yakima, Wenatchee, Spokane, Walla Walla, and divers other places to the grand jurors unknown, also in the State of Washington, did knowingly, wilfully, unlawfully and feloniously conspire, combine, confederate and agree together, and with each other, and with divers other persons to the grand jurors unknown, to commit divers offenses against the United States, to-wit, violations of Section 338, Title 18 United States Code, and Section 17 (a) of the Securities Act of 1933, as amended, and among such violations, to commit the divers offenses charged against the said defendants in the preceding counts of this indictment, and to effect the object thereof, using and intending to use the mails of the United States, and directly and indirectly employing the scheme and artifice described in the first count of this indictment in the sale of securities by the use of the mails; and the said defendants did thereafter do divers acts to effect the object of the said unlawful and felonious conspiracy, to wit, not only the several acts of placing letters, circulars, advertisements and other publications in post offices of the United States, and causing letters to be delivered by mail according to the directions thereon in furtherance of the scheme

and artifice described in the said first count and as in the several preceding counts hereof set forth, but also numerous acts of preparing [48] letters, circulars, advertisements and publications for mailing and delivery, and selling securities and making to the said investors the false and fraudulent pretenses, representations and promises in the said first count of this indictment described, all for the purpose of obtaining by such means the money and property of the said investors, and by the unlawful use of the Post Office establishment of the United States, as well as certain overt acts in furtherance of and to effect the object of the said conspiracy now here specified, that is to say:

OVERT ACTS

1. The said defendants, to effect the object of the said conspiracy, and attempting so to do, on or about the thirtieth day of April, 1936, at Tacoma, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, then and there caused to be delivered by mail, according to the directions thereon, a certain form letter, then and there dated April 29, 1936, and addressed and directed to

Mrs. Felicita Crosta
3570 East G Street
Tacoma, Washington

the said letter being then and there in words and figures as follows, to-wit: [49]

Peoples Gas and Oil Co.
Of Washington

Executive Offices

Phone SEneca 4200

Suite 410

Seattle

Fourth and Pike Bldg.

Washington

April 29th, 1936

Mrs. Felicita Crosta
3570 East G Street
Tacoma, Washington

Dear Friend and Partner:

This will acknowledge receipt of your executed assignment to the Peoples Gas and Oil Development Company of an oil and gas lease, in accordance with the legal description contained therein. It is with pleasure that we receive this assignment.

We are informed that you have purchased this lease from the Peoples Gas and Oil Company under a "Contract to Purchase", and we acknowledge receipt of your assignment with the understanding that you will complete all of the terms of your contract with the Peoples Gas and Oil Company, which is necessary in order that your rights may be completed.

Enclosed you will find an executed copy of your assignment to us. Your acceptance of the same acknowledges the above understanding, and makes this letter a part of the agreement between us.

When you have completed your payments and have received your recorded oil and gas lease assignment from the Peoples Gas and Oil Company, we will expect you to notify us to that effect.

The value of your friendship and support of our great development project in Frenchman Hills cannot be overestimated, and Doc Myers, our thousands of partners and I are most happy to know that we can always count on you and your family among the great number of our Washington friends who are for "Oil in Washington".

We trust that the day is not too far distant when we may mutually rejoice over the success which we hope will crown our efforts.

Very sincerely yours,

PEOPLES GAS AND OIL
DEVELOPMENT CO.

WAB:mn

BILL BROOME
WILLIAM A. BROOME,
President

Now drilling "Donnie Boy No. 1", Frenchman Hills, Grant County, Wash. [50]

2. The said defendants, to effect the object of the said conspiracy, and attempting so to do, on or about the first day of September, 1936, at Olympia, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, then and there caused to be delivered a letter addressed to

Mrs. Fred Bertalamay
R. F. D. #3, Box 505
Olympia, Wash.

the said letter omitting the letterhead, date line and salutation, reading as follows:

We acknowledge with thanks the balance due on

your contract to purchase 5 acres of oil and gas leasehold.

We have been advised by the Peoples Gas & Oil Development Company that you have assigned your lease to them under their "community plan of development" on Frenchman Hills.

Upon receipt of the \$5.00 fee referred to in paragraph 6 of your contract with us, we shall proceed immediately to make up all of the papers necessary to substantiate the ownership of your rights, and this information will then be recorded in the permanent records of the Peoples Gas and Oil Development Company. You will shortly thereafter be advised by the Peoples Gas and Oil Development Company that the "Assignment and Agreement" heretofore executed with that Company (a copy of which you now hold), is in full force and effect.

We again thank you for this very pleasant business association, and sincerely trust that your speculation in the purchase of leases on Frenchman Hills may prove to be profitable.

Please be assured that if we are able to be of any service to you in the future, we shall be only too happy to have you call on us.

Very sincerely yours,

PEOPLES GAS AND OIL

COMPANY,

J. F. SIMONS

J. F. Simons,

President [51]

3. The said defendants, to effect the object of the said conspiracy, and attempting so to do, on or

about the thirteenth day of August, 1936, at Centralia, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, then and there caused to be delivered a letter addressed to

Mr. & Mrs. Clarence Belles
207 No. Buckner
Centralia, Washington

the said letter advising the conversion of gas and oil lease units to shares of stock of the said Peoples Gas and Oil Development Company, the said letter bearing the facsimile signature "Bill Broome" and containing at the bottom of page three thereof, the following:

P. S. We have made arrangements with the Peoples Gas and Oil Company so that you may receive the free services of a Notary Public at any of their offices in the execution of the necessary papers.

4. The said defendants, to effect the object of the said conspiracy, and attempting so to do, on or about the nineteenth day of May, 1936, at Tacoma, in the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, then and there caused to be delivered to

Clinton Brink
4521 So. Jay Street
Tacoma, Washington

receipt number 17970 for Five (\$5.00) Dollars in payment of recording fee. [52]

5. The said defendants, to effect the object of

said conspiracy, and attempting so to do, on or about the first day of September, 1936, at Seattle, Washington, then and there mailed a registered letter to

Mrs. Janet Jewell
132 Belmont Ave. N
Seattle, Wn.

the said letter then and there containing certificate number 1184 for twenty (20) shares of stock of the said Peoples Gas and Oil Development Company, issued to the said Mrs. Janet Jewell.

8. The said defendants, to effect the object of the said conspiracy, and attempting so to do, on or about the twenty-seventh day of February, 1937, at Seattle, Washington, then and there published and caused to be published a copy of the publication called "Peoples Progress" dated February 27, 1937 and being designated as Vol. II, No. 3, 12 pages, 2 sections

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. CHARLES DENNIS

United States Attorney

F. A. PELLEGRINI

Assistant United States
Attorney

G. D. HILE

Assistant United States
Attorney

OLIVER MALM

Assistant United States
Attorney [53]

No.

United States District Court, Western District of
Washington, Southern Division

The United States of America vs. Joshua F. Simons,
alias James F. Simons, alias Jim Simons, Milton
Simons, William Markowitz, Samuel Marko-
witz, alias "Derby" Markowitz, H. Harry
Meyers, William A. Broome, Louis Roth, Isa-
dore B. Taub and Pat Robkins.

INDICTMENT

Violation Sections 338 and 88, Title 18, United States
Code; Section 17 (a) (1) of Securities Act of
1933, as amended.

A true bill,

E. E. BURCHFIELD,
Foreman.

J. CHARLES DENNIS

[Endorsed]: Presented to the Court by the Fore-
man of the Grand Jury in open Court in the presence
of the Grand Jury and Filed in the District Court
December 2, 1938. Elmer Dover, Clerk. By Edgar
Scofield, Deputy. [54]

In the United States District Court for the Western
District of Washington, Southern Division

RECORD OF PROCEEDINGS

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 13th day of February, 1939, the Honorable Edward E. Cushman, United States District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court, as follows:

[Title of Cause.]

No. 15187

RECORD OF ARRAIGNMENT AND PLEA OF
DEFENDANT H. HARRY MEYERS

On this 13th day of February, 1939, this case is called for arraignment and entry of pleas of defendants. F. A. Pellegrini, assistant United States Attorney, appears on behalf of the Government. *** H. Harry Meyers is present with his attorneys, Anthony Savage and Arthur Simon. ***

Defendant H. Harry Meyers is arraigned and states his true name is H. Harry Meyers and enters a plea of not guilty to the Indictment herein. [55]

[Title of District Court and Cause.]

PORTIONS OF DOCKET ENTRIES AS REQUESTED BY PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL:

(Item 3)

Feb. 14, 1939 Entered record, trial commenced ***

(Item 4)

Aug. 21, 1939 Filed Verdict;

Joshua F. Simons, Guilty as charged;

Milton Simons: Not Guilty on Counts 1 to 9 incl.; Guilty on Counts 10 to 13 incl.;

William Markowitz, Guilty as charged;

Samuel Markowitz, Not Guilty on Counts 1 to 9 incl.; Guilty on Counts 10 to 10 13 incl.;

H. Harry Meyers, disagreement;

William A. Broome, Not Guilty;

Louis Roth, Not Guilty;

Maurice Robkins, Not Guilty;

(Item 5)

Aug. 29, 1939 * * *

Filed Notice of Appeal, Joshua F. Simons, William Markowitz and Samuel Markowitz;

Lodged Transcript of Testimony;

Filed Order allow, defts. to Dec. 23 to settle Bill of Exceptions and file Assignment of Errors;

Entered order fix. bail and appeal bonds, towit: \$10,000 each, J. F. Simons and William Markowitz, \$5,000, Samuel Markowitz;

Notice of Appeal transmitted to Circuit Court of Appeals, with transcript of portions of docket entries;

(Item 6)

Oct. 27, 1941 * * *

Entered record of hearing re entry of Mandate of Circuit Court of Appeals (Judgm. affirmed) re defts. Joshua H. Simons, William and Samuel Markowitz;

Filed telegram, Atty. Genl., re stay of commitment;

Filed Order stay, commitm. Joshua Simons, William and Samuel Markowitz, to Nov. 26, 1941; [56]

(Item 7)

Oct. 5, 1942—Ent. record re-trial of deft. Meyers menced; John S. Swenson and Gerald Hile, attys. for Govt.; A. E. Simon and Bertil Johnson, for deft.; Judge Leavy presiding; Jury empanelled; 2 alternates sworn;

* * * [57]

[Title of District Court and Cause.]

VERDICT

We, the jury empanelled in the above-entitled cause, find the defendant, H. Harry Meyers,

Guilty as charged in Count I of the Indictment herein;

Guilty as charged in Count II of the Indictment herein;

Guilty as charged in Count III of the Indictment herein;

Guilty as charged in Count IV of the Indictment herein;

Guilty as charged in Count V of the Indictment herein;

Guilty as charged in Count VI of the Indictment herein;

Guilty as charged in Count VII of the Indictment herein;

Guilty as charged in Count VIII of the Indictment herein;

Guilty as charged in Count IX of the Indictment herein;

Guilty as charged in Count X of the Indictment herein;

Not guilty as charged in Count XI of the Indictment herein;

Not guilty as charged in Count XII of the Indictment herein;

Not guilty as charged in Count XIII of the Indictment herein.

RAYMOND F. BERRY

Foreman.

[Endorsed]: Filed Nov. 12, 1942. [58]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the defendant, H. Harry Meyers, and moves this Honorable Court on the records and files

herein, for an order granting him a new trial in the above entitled action upon each count thereof, upon each of the following grounds:

I.

That there was no sufficient evidence of the use of the mails of the United States within the jurisdiction of this Court by or on behalf of the defendant to authorize the submission to the Jury of any issue on Counts 1 to 10 inclusive of the said indictment, and that the Court erred in submitting the said issues to the Jury, and erred in overruling defendant's motion for a dismissal of said counts and for a directed verdict of not guilty on said counts, to all of which the said defendant duly excepted.

II.

That the verdict is contrary to the evidence.

III.

That the verdict returned against this defendant on Counts 1 to 10 inclusive is inconsistent with the verdict of not guilty returned on Counts 11 to 13 inclusive.

IV.

That the Court committed numerous errors in ruling upon the admissibility of evidence and the various motions made by the defendant, and in instructing the jury, all of [59] which were highly prejudicial to the defendant and were duly excepted to by him including the following:

(a) The Court erred in admitting, over the ob-

jection of the defendant that the same was incompetent as hearsay, plaintiff's Exhibit 98, and erred in denying motion to strike the same and withdraw the same from the consideration of the jury, and in refusing to grant defendant's motion for a mistrial upon the denial of the motion to strike. Plaintiff's Exhibit 98 herein referred to was the letter written by Joseph B. Strauss to Post Office Inspector Swenson in June, 1937, containing much accusatory matters charging defendant with misconduct, asserting that defendant was not in any manner connected with or entitled to credit for construction of the Golden Gate Bridge, and asserting that the defendant was possibly of no means. Defendant duly excepted to the over-ruling of his objection and to the overruling of the motions to which reference hereinabove in this paragraph is made.

(b) The Court erred in admitting in evidence, over the objection of the defendant that the same was incompetent as hearsay, plaintiff's Exhibit 95, being volume describing the history of the construction of the Golden Gate Bridge purportedly compiled under the direction of Joseph B. Strauss. To the overruling of the said objection defendant duly excepted.

(c) The Court erred in rejecting defendant's Exhibit A 110, being the response of the witness Paul D. Coles to the inquiry of Post Office Inspector John S. Swenson for detailed information concerning the life history and financial affairs of the

defendant, to which refusal exception was duly noted. [60]

(d) The Court erred in refusing to admit in evidence, defendant's exhibit for identification A 122, a letter written by Ward B. Blodgett to Mr. W. A. Broom under date of June 23, 1934, to which refusal exception was only noted.

(e) The Court erred in refusing to admit in evidence defendant's exhibit for identification A 123, which was a carbon copy of the letter of William A. Broome dated June 26, 1934, in answer to defendant's exhibit for identification No. A 122. To said refusal exception was duly noted.

(f) The Court erred in refusing to admit in evidence defendant's exhibit for identification No. A 131, being carbon copy of a letter dated June 1, 1934, addressed to the witness Dwight C. Roberts by William A. Broome asking the advice of the latter with reference to the purchase of drilling equipment. To said refusal exception was duly noted.

(g) The Court erred in refusing to receive in evidence defendant's exhibit for identification A 204, being a file of correspondence corroborative of defendant's testimony that he had a claim in the sum of \$165,000.00 against John A. Robblings Son Company, to the refusal of which exception was duly noted.

(h) The Court erred in refusing and rejecting to admit in evidence defendant's exhibit for identification A 205, being a file of correspondence corroborative of defendant's claim that he was entitled to

receive from McClintic-Marshall Company the sum of \$330,000.0 to the refusal of which exception was duly noted.

V.

The Court erred in admitting in evidence, over the [61] objection of this defendant that the same was irrelevant and immaterial and too remote, the testimony of witness Ernest Troeger as to transactions had by the latter with the defendant in the year 1920. To the admission of said testimony an exception was duly noted.

VI.

That the Court erred and abused its discretion in unduly and improperly restricting the cross-examination of the Government witness Post Office Inspector Swenson, in arbitrarily refusing to allow cross-examination to establish the animus and bias of the witness, to which refusal defendant caused an exception to be duly noted.

VII.

The Court erred in refusing the request of this defendant, repeatedly made in the earlier stages of the trial, that the jury be instructed with reference to hearsay testimony which was admitted regarding statements of others who were originally defendants in this cause, out of the presence of the said defendant, that the jury should consider such evidence against this defendant only if and when they should be convinced by the evidence beyond a reasonable doubt that this defendant had entered into a criminal conspiracy with the defendants so mak-

ing said statements or had authorized the making of such statements. To the refusal of such cautionary instruction the defendant duly excepted at the time, and said error was magnified by the fact that the trial herein lasted for five weeks and becomes more glaring by reason of the fact that this defendant was acquitted on the conspiracy count.

VIII.

The Court erred in admitting in evidence, over the [62] objection of the defendant that the same was irrelevant and immaterial and incompetent, evidence of large profits supposedly made by co-defendants out of the operation of the scheme charged in the indictment.

IX.

That the Court erred in admitting in evidence, over the objection of this defendant, Government Exhibits 110 G, 110 H, and 110 I, being income tax returns for the years 1937, 1938 and 1939. The objection to the admission of said income tax returns in evidence was upon the ground that the same were incompetent as not properly identified and especially upon the ground that the same were required by law to be filed after the return of the indictment herein under penalties prescribed by the income tax law, and that to use them as evidence on behalf of the Government in this case constituted a violation of the right of this defendant against immunity from self incrimination under the Fifth Amendment of the Constitution of the United

States. To the admission in evidence of said income tax returns said defendant at said time duly excepted after the overruling of said objection by the Court.

X.

The Court erred in refusing to modify the instruction given by the said Court with reference to the elements necessary to constitute a false representation by including therein the requirement that the representation should be with reference to a material matter as requested by said defendant, to which refusal said defendant then and there duly excepted.

XI.

The Court erred in refusing to amplify the instruction given by the said Court with reference to the effect of [63] character evidence, and in refusing to give defendant's requested instruction No. 25 with reference to the effect of character evidence, in that, the said Court erroneously declined to instruct the jury "If evidence of good character, considered in connection with all the other evidence upon the question of guilt or innocence, raises a reasonable doubt, it is your duty to return a verdict in favor of the defendant even where in the absence of such evidence of good character no such doubt would exist."

/s/ ARTHUR E. SIMON

/s/ BERTIL E. JOHNSON

Attorneys for Defendant.

Copy received this 14th day of November, 1942.

/s/ J. CHARLES DENNIS

/s/ G. D. HILE

/s/ HARRY SAGER

Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 14, 1942. [64]

In the United States District Court for the Western District of Washington, Southern Division

RECORD OF PROCEEDINGS:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 21st day of November, 1942, the Honorable Charles H. Leavy, United States District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court, as follows:

[Title of District Court and Cause.]

No. 15187

MOTION FOR NEW TRIAL

Now on this 21st day of November, 1942, this cause comes on before the court for hearing on motion for new trial. Defendant is in court represented by counsel A. E. Simon and Bertil Johnson. The Government is represented by Gerald Hile and John Swenson.

Arguments by Mr. Simon.

At 11:05 Court recessed. At 11:27 court again in session. Defendant is in court, all counsel and parties present, Mr. Simon resumes argument. At 11:42 Mr. Hile begins argument.

Court now overrules motion for new trial and exceptions are allowed. Statements by Mr. Hile, Mr. Johnson and Mr. Meyers.

* * * * [65]

United States District Court
Western District of Washington
Southern Division
No. 15187—Tacoma

UNITED STATES OF AMERICA,
Plaintiff,
vs.
H. HARRY MEYERS,
Defendant.

JUDGMENT AND SENTENCE

Comes Now on this 21st day of November, A. D. 1942, the said defendant, H. Harry Meyers, with his attorneys, Mr. Bertil E. Johnson and Mr. Arthur E. Simon, into open Court for sentence, and being informed by the Court of the charges herein against him, and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he making a state-

ment in his own behalf said, Wherefore, by reason of the law and the premises, it is

Considered, Ordered and Adjudged by the Court that the said defendant, H. Harry Meyers, having been convicted by a jury duly empaneled herein, on ten counts of the indictment herein, is guilty as charged in Counts One to Ten inclusive of the Indictment, and that he be committed to the custody of the Attorney General of the United States for imprisonment in a Federal Institution of the penitentiary type, or in such other like institution as the Attorney General of the United States or his authorized representatives may by law designate, for the period of Five (5) Years on each of Counts One to Ten Inclusive, provided, however, that the sentences herein imposed on each of said Counts shall run concurrent, and not consecutive. [66]

And the said defendant is hereby remanded into the custody of the United States Marshal for this District for delivery to the Warden of such institution as may be by the Attorney General of the United States, or his authorized representative, may designate, for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of commitment, and be recognized by the Warden or Keeper of any Federal Penal Institution as such.

To which defendant excepts and exception is allowed.

Done in Open Court this 21st day of November,
1942.

CHARLES H. LEVY

United States District Judge

Presented by:

GERALD D. HILE

Asst. United States Attorney

Violation of 338 T 18 USC (Mail Fraud).

[Endorsed]: Filed Nov. 21, 1942. [67]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

H. Harry Meyers,
741 South Dunsmuir Avenue
Los Angeles, California

Name and Address of Appellant's Attorneys:

Arthur E. Simon
1020 1411 Fourth Avenue Building
Seattle, Washington
Bertil E. Johnson
926 Rust Building
Tacoma, Washington

Offense:

Violation of Section 338, Title 18, United States
Code.

Date of Judgment: November 21, 1942.

Brief Description of Judgment: That the defendant is guilty of the crime of violating Section 338,

Title 18 United States Code as charged in Counts I to X inclusive of the indictment; that he be imprisoned in a United States Penitentiary for five (5) years on each count from I to X inclusive; provided, however, that the sentence herein imposed on each [68] of said counts shall run concurrent and not consecutive; the place of imprisonment to be designated by the Attorney General of the United States.

Name of Prison Where Now Confined If Not on Bail:

On bail.

I, the above named appellant, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

H. HARRY MEYERS.

Dated: November 24, 1942.

Grounds of Appeal:

I.

That there was insufficient evidence to sustain the verdict.

II.

That the verdict is contrary to the evidence.

III.

That the verdict returned against this defendant on Counts I to X inclusive is inconsistent with the verdict returned on Counts XI to XIII inclusive.

IV.

That the Court committed numerous errors in ruling upon the admissibility of evidence and the vari-

ous motions made by the defendant and in instructing the jury, all of which were highly prejudicial to him and were duly excepted to by him, prominent among which are the following: [69]

(1) The Court erred in admitting in evidence Plaintiff's Exhibit 98, being a letter written by Joseph B. Strauss in June, 1937, and addressed to Post Office Inspector John Swenson, on the ground that said letter was hearsay and incompetent.

(2) The Court erred in refusing to grant defendant's motion to strike said Exhibit 98 from the files.

(3) The Court erred in refusing to grant the defendant's motion for a mistrial after having denied motion to strike plaintiff's Exhibit 98.

(4) The Court erred in admitting in evidence Plaintiff's Exhibit 95, being volume describing the history of the construction of the Golden Gate Bridge purportedly compiled under the direction of Joseph B. Strauss, to the admission of which the defendant had objected on the grounds that the same was incompetent and hearsay.

(5) That the Court erred in admitting in evidence, over the objection of the defendant, Plaintiff's Exhibit 23, being a letter which was identified by the witness Hurwitz, he having signed said letter with the name Luther M. Weedon, which was addressed to the Peoples Gas & Oil Company and purporting to notify them that on account of the misrepresentations made by the latter in the sale of their leases, the Northwest Gas & Oil Association was withdrawing its endorsement. The grounds

of the objection was that the same was incompetent and expressing an opinion and a conclusion.

(6) The Court erred in rejecting defendant's exhibit for identification A 110, being the response of the witness Paul D. Coles to the inquiry of Post Office Inspector John S. Swenson.

(7) The Court erred in rejecting the defendant's exhibit [70] for identification A 122, being a letter written by Ward B. Blodgett to Mr. W. A. Broom under date of June 23, 1934.

(8) The Court erred in rejecting defendant's exhibit for identification A 123, which was a carbon copy of the letter of William A. Broom dated June 26, 1934, in answer to defendant's exhibit for identification No. A 122.

9. The Court erred in rejecting defendant's exhibit for identification A 131, being carbon copy of a letter dated June 1, 1934, addressed to the witness Dwight C. Roberts by William A. Broom.

(10) The Court erred in rejecting defendant's exhibit for identification A 204, being a file of correspondence corroborative of defendant's testimony that he had a claim in the sum of \$165,000.00 against John A. Roblings Son Company.

(11) The Court erred in refusing and rejecting to admit in evidence defendant's exhibit for identification A 204, being a file of correspondence corroborative of defendant's claim that he was entitled to receive from McClintic-Marshall Company the sum of \$330,000.00.

(12) The Court erred in permitting the witness Ernest Troeger to testify concerning transac-

tions had by the said Ernest Troeger and his father with the defendant in the year 1920, the objection being on the grounds that the same was irrelevant, immaterial and too remote.

(13) The Court erred and abused its discretion in unduly and improperly restricting the cross-examination of the Government witness Post Office Inspector Swenson, in arbitrarily refusing to allow cross-examination to establish the animus and bias of the witness Swenson.

(14) The Court erred in admitting in evidence, over the [71] objection of the defendant on the grounds that the same was irrelevant, immaterial and incompetent, evidence of large profits supposedly made by co-defendants out of the operation of the scheme charged in the indictment.

(15) The Court erred in admitting in evidence, over the objection of the defendant, Government Exhibits 110 G, 110 H, and 110 I, being income tax returns for the years 1937, 1938, and 1939. The objection to said admission being on the grounds that the same were incompetent as not properly identified, and violating the constitutional rights of the defendant under the Fifth Amendment of the Constitution of the United States.

(16) The Court erred in refusing the request of the defendant repeatedly made in the earlier stages of the trial, that the jury be instructed in reference to hearsay testimony which was admitted regarding statements of others who were originally defendants in this cause, such statements having been made out of the presence of the said de-

fendant, and that the jury should consider such evidence against this defendant only if and when they should be convinced by the evidence, beyond a reasonable doubt, that this defendant had entered into a criminal conspiracy with the defendants so making said statements or had authorized the making of such statements.

(17) The Court erred in refusing to modify the instruction given by the said Court with reference to the elements necessary to constitute a false representation by including therein the requirement that the representation should be with reference to a material matter.

(18) The Court erred in refusing to amplify the instruction given by the said Court with reference to the effect of character evidence, and in refusing to give defendant's [72] requested instruction 25 with reference to the effect of character evidence, in that, the said Court erroneously declined to instruct the jury "If evidence of good character, considered in connection with all the other evidence upon the question of guilt or innocence, raises a reasonable doubt, it is your duty to return a verdict in favor of the defendant even where in the absence of such evidence of good character no such doubt would exist."

Copy received this 25th day of November, 1942.

J. CHARLES DENNIS,

United States Attorney.

GERALD D. HILE,

Assistant United States Attorney.

[Endorsed]: Filed Nov. 25, 1942. [73]

At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the ninth day of July in the year of our Lord one thousand nine hundred and forty three.

Present: Honorable Francis A. Garrecht,
Circuit Judge, Presiding.
Honorable William Healy, Circuit Judge.

No. 10325

H. HARRY MEYERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME TO FILE AND
SETTLE BILL OF EXCEPTIONS, AND TO
FILE ASSIGNMENTS OF ERROR.

Upon consideration of the motion of appellant, and stipulation of counsel for respective parties, and good cause therefor appearing

It Is Ordered that the time within which appellant may lodge his proposed bill of exceptions herein, and file his assignment of error be, and hereby is extended to and including August 16, 1943; that the appellee may have to and including

August 30, 1943, within which to propose amendments to said bill of exceptions, and that the bill of exceptions may be settled and filed on or before September 10, 1943. [74]

I hereby certify that the foregoing is a fully, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, this 9th day of July, 1943.

(Seal)

PAUL P. O'BRIEN,

Clerk, U. S. Circuit Court of
Appeals for the Ninth Cir-
cuit.

[Endorsed]: Filed July 12, 1943. [75]

At a Stated Term, to wit: The October Term, 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the ninth day of August, in the year of our Lord one thousand nine hundred and forty-three.

Present: Honorable Francis A. Garrecht,

Circuit Judge, Presiding.

Honorable William Denman,

Circuit Judge.

Honorable William Healy, Circuit Judge.

[Title of Cause.]

No. 10325

ORDER EXTENDING TIME TO FILE ASSIGNMENTS OF ERROR, AND TO SETTLE AND FILE BILL OF EXCEPTIONS

Upon consideration of the stipulation of counsel for respective parties, and good cause therefor appearing,

It Is Ordered that the time within which appellant may lodge his proposed bill of exceptions, and file his assignment of error be, and hereby is extended to and including September 15, 1943, and that the appellee may have to and including September 29, 1943 within which to propose any amendments to the bill of exceptions, and that the time within which the bill of exceptions may be settled and filed be, and hereby is extended to and including October 11, 1943. [76]

I hereby certify that the foregoing is a full, true and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, this 10th day of August, 1943.

PAUL P. O'BRIEN,

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit. By Frank H. Schmid, Deputy Clerk.

[Endorsed]: Filed Aug. 12, 1943. [77]

United States District Court
Western District Of Washington
Southern Division

No. 15187

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

H. HARRY MEYERS,

Defendant.

ORDER TO FORWARD ORIGINAL EXHIBITS
WITH TRANSCRIPT OF RECORD
ON APPEAL.

This matter coming on for hearing upon motion by counsel for plaintiff, counsel for defendant agreeing and the Court being advised, it is now

Ordered that upon forwarding the Transcript of Record on Appeal in the above entitled cause, the original exhibits admitted in evidence in the trial thereof, in behalf of both the Government and the Defense, be forwarded to the United States Circuit Court of Appeals for the Ninth Circuit, and that pending the preparation of the Bill of Exceptions and the Record in said case the exhibits be and remain in the custody of the Clerk of this Court.

Dated This 4th day of October, 1943.

CHARLES H. LEAVY

United States District Judge

[Endorsed]: Filed Oct. 4, 1943. [78]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR SETTLEMENT AND FILING OF BILL OF EXCEPTIONS.

This matter having come on regularly for hearing before the Court for the fixing of time for the settlement and filing of the appellant's bill of exceptions and assignments of errors herein, it is, hereby

Ordered that the appellant shall serve upon appellee a transcript of all testimony and proceedings herein on or before the 16th day of May, 1943, and that appellant shall lodge with the Clerk of the above entitled Court, on or before July 16, 1943, his proposed bill of exceptions herein, and that appellee shall file its proposed amendments to appellant's proposed bill of exceptions on or before September 16, 1943. It is further

Ordered that said bill shall be settled by the above entitled Court on or before September 27, 1943.

Done in Open Court this 15 day of December, 1943.

CHARLES H. LEAVY

United States District Judge

Approved by:

BERTIL E. JOHNSON

Attorney for Defendant

G. D. HILE

Asst. United States Attorney

[Endorsed]. Filed Dec. 15, 1942. [79]

In The United States District Court For The
Western District of Washington, Southern Division.

RECORD OF PROCEEDINGS:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 4th day of October, 1943, the Honorable Charles H. Leavy United States District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court, as follows:

[Title of Cause.]

RECORD OF HEARING RE SETTLEMENT
OF BILL OF EXCEPTIONS and PREPA-
RATION OF APPEAL RECORD.

On this 4th day of October, 1943, defendant's proposed Bill of Exceptions and the Government's proposed Amendments thereto come on for settlement, defendant appearing by his attorney, Bertil E. Johnson and the Government appearing by its attorneys, Gerald Hile, John Swenson and A. J. Zimmerman.

It is ordered that the Court's Instructions to the jury and the Court's statements in regard to defendant's Motion for New Trial shall become a part of the Bill of Exceptions. The Bill of Exceptions (in 3 volumes), is now settled and certificate there-to is signed by the Court, and the Bill of Exceptions as settled is now filed.

Counsel for both sides orally stipulate, and the Court so orders, that all of the original admitted exhibits selected by counsel as being pertinent to the appeal herein [80] shall be transmitted to the Circuit Court of Appeals, and where pages may be removed from accounting books admitted in evidence, it is ordered that those particular pages, designated by counsel, may be removed from the volumes and forwarded to the Circuit Court of Appeals. [81]

[Title of District Court and Cause.]

PRAECIPE FOR PORTIONS OF RECORD TO
BE INCORPORATED INTO TRANSCRIPT
OF RECORD ON APPEAL.

To The Clerk of The Above Entitled Court:

You are hereby requested to prepare the following portions of the record and to incorporate such portions into the transcript on appeal in the above entitled cause, to wit:

1. Indictment.
2. Your minute entries reflecting only the arraignment and plea of not guilty to all counts of the indictment by the defendant H. Harry Meyers on February 13th, 1939.
3. Your docket entries of February 14th, 1939 showing commencement of the first trial in this cause.
4. Your docket entries of August 21st, 1939 reflecting the verdict of the jury in the first trial as to each defendant in the above entitled cause.

5. Your complete docket entries of August 29th, 1939 showing the Notice of Appeal of J. F. Simons, William Markowitz and Samuel Markowitz from the verdict of the jury.

6. Your complete docket entry of October 27th, 1941 showing the filing of the mandate of the Circuit Court of Appeals for the Ninth Circuit affirming the conviction as to J. F. Simons, William Markowitz and Samuel Markowitz.

7. Your complete docket entries of October 5th, 1942 showing the commencement of the re-trial of the defendant H. Harry Meyers. [82]

8. Verdict of the jury as to H. Harry Meyers filed November 12th, 1942.

9. Motion for new trial of the defendant Meyers filed November 14th, 1942.

10. Your complete minute entries showing the denial of Defendant Meyers' Motion for New Trial of November 21st, 1942.

11. Judgment and sentence entered November 21st, 1942 as to the Defendant Meyers.

12. Notice of Appeal of Defendant Meyers filed November 25th, 1942.

13. All orders of the Circuit Court of Appeals filed with you which extend the time for lodging, filing and settling appellant's proposed Bill of Exceptions.

14. Order of the District Court of October 4th, 1943 directing that you forward all exhibits admitted in the above entitled cause to the Circuit Court of Appeals.

15. This praecipe.

16. Order dated Dec. 15, 1942 extending time for lodging proposed Bill of Exceptions and Assignment of Errors.

BERTIL JOHNSON

Attorney for Appellant

J. CHARLES DENNIS

United States Attorney

G. D. HILE

Asst. United States Attorney

Attorneys for Appellee

Approved:

BERTIL JOHNSON

Attorney for Appellant

J. CHARLES DENNIS

United States Attorney

G. D. HILE

Asst. United States Attorney

Attorneys for Appellee

[Endorsed]: Filed Oct. 6, 1943. [83]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD ON APPEAL

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do *hereby that* the foregoing Transcript of the Record on Appeal, consisting of pages numbered 1 to 83, inclusive, is a full, true and correct copy of so much of the record, papers and proceedings in

Cause 15187, United States of America, Plaintiff, vs. H. Harry Meyers, Defendant, as required by joint Praecept of the parties for the portions of the record to be incorporated into the Transcript of the Record on Appeal, (on file and of record in my office at Tacoma, Washington), and the same constitutes the Transcript of the Record on Appeal from the Judgment of the United States District Court for the Western District of Washington, Southern Division, to the United States Circuit Court of Appeals for the Ninth Circuit.

I Further Certify that the original Bill of Exceptions herein, as certified by the District Court, consisting of 716 pages (in three volumes), and the original Assignment of Errors, consisting of 51 pages, are transmitted herewith. [84]

I Further Certify that the following is a full, true and correct statement of all expenses, fees and charges incurred by me on behalf of the Appellant herein in the preparation and certification of the aforesaid Transcript of the Record on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Appeal fee	\$ 5.00
Clerk's fee for comparing 234 folios @ 5c per folio	11.70
Clerk's certificate re Transcript of Record	.50
Clerk's certificate re original Exhibits...	.50
	<hr/>
	\$17.70

I further certify that the said amount of \$17.70 has been paid in full to me by the Appellant herein.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Tacoma, in the Western District of Washington, this 19th day of October, 1943.

[Seal] JUDSON W. SHORETT,

Clerk.

By EDGAR SCOFIELD,

Deputy. [85]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO ORIGINAL
EXHIBITS

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the following original exhibits in the Cause No. 15187, United States of America, Plaintiff, vs. H. Harry Meyers, Defendant, numbered as follows:

Plaintiff's Exhibits: 1-8 inc., 10-19 inc., 21-24 inc., 26-38 inc., 40-44 inc., 46-60 inc., 63, 64, 66-74 inc., 76-101 inc., 103-106 inc., 108-112 inc., 121-125 inc., 129, 132, 153-170 inc., 175-250 inc., 252-256 inc., 258-277 inc., 279-283 inc.

Defendant's Exhibits: 1-20 inc., 24, 26-30 inc., 34-36 inc., 38-46 inc., 48-60 inc., 62-109 inc., 111, 112, 113, 115-121 inc., 124-130 inc., 132, 133, 138-140 inc., 144-152 inc., 154-162 inc., 169-172 inc., 174-193 inc., 196-203 inc., have been transmitted, prepaid, via American Railway Express in two separate containers to the United States Circuit Court of Ap-

peals for the Ninth Circuit, San Francisco, California.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, in the City of Tacoma, in the Western District of Washington, this 19th day of October, 1943.

[Seal] JUDSON W. SHORETT,
Clerk.

By EDGAR SCOFIELD,
Deputy. [86]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

The appellant, H. Harry Meyers, hereby respectfully says, that in the record of the proceedings before the District Court for the Western District of Washington, Southern Division, before whom the above cause was tried, manifest errors occurred to his prejudice, and that he hereby assigns the following errors, which he avers occurred:

1. That the District Court erred in admitting in evidence, over the objection of the defendant—appellant, Government's Exhibit 98, on the ground that the same was incompetent and hearsay:

Q. (By Mr. Hile): Handing you what is marked as Government's Exhibit 98, for identification, I will ask you if you recognize Strauss's signature on that letter?

A. (Mr. Sparks): Yes, that is Mr. Strauss's signature.

Mr. Hile: I will also offer Exhibit 98 for identification, and ask the Court to look at it.

The Court: Any objection to 98?

Mr. Simon: Yes, on the ground it is incompetent and hearsay.

Mr. Hile: I think at least portions of it are [1*] admissible, your Honor, if not the entire Exhibit, in connection with these other exhibits that have been put in by the defense.

The Court: Objection will be overruled and it will be admitted as an exhibit.

Mr. Simon: Will your Honor allow us an exception; also does your Honor appreciate to whom this letter was written and the occasion for it?

The Court: Yes.

Mr. Simon: I move to strike the exhibit and ask that the jury be instructed to disregard the contents thereof as hearsay, and I move for a mistrial; ask that the jury be withdrawn and a mistrial declared.

The Court: Motion denied.

Mr. Simon: Exception.

Exhibit 98 reads as follows:

*Page numbering appearing at foot of page of original Assignment of Errors.

“Joseph B. Strauss	Clifford E. Paine
President	Vice President
Cable Address,	Bascule, Lift,
Bascule Chicago	Swing and Long
A B C Code Fifth	Span Bridge
Edition	Designs
Bentley’s Code	Investigations
	Reports
Richard K. Strauss	Estimates
Contracting Engineer	Supervision
Strauss & Paine, Inc.	
Consulting Engineers	
111 Sutter Street	
San Francisco, Calif.	

No. 15187

Plaintiff Exhibit 98

June 2, 1937

Mr. J. S. Swenson
P. O. Inspector
Post Office Department
Seattle, Washington

My dear Mr. Swenson:

Your letter of March 27 has been received. I have [2] had so much on my hands during these last months prior to the opening of the Golden Gate Bridge to traffic that it has been impossible for me to give attention to other matters.

My connection with Meyers was an unpleasant experience which I have sought to put out of my mind. I have known him only since 1928. He had recom-

mendations from General Goethals whom I knew very well, and he was introduced to me at San Francisco. At that time he claimed to represent eastern capitalists, but I have no evidence as to this other than his own statement. He was then an applicant for a private franchise for a private franchise for a bridge from San Francisco to Oakland. Beyond that he had apparently no business interests. The man has a pleasing personality and is a glib talker and claimed intimate acquaintance with royalty and people of prominence abroad and in the United States, most of which, in my opinion, was purely talk. Later I was informed that his birthplace was a small town in Indiana, from which he ran away at the age of thirteen to join a circus and then engaged in a patent medicine business selling pills, which seemingly is responsible for the title of "Doctor". He never attended college and holds no degree of any kind, so far as I know.

As respects the Golden Gate Bridge, my work on this project began in 1918.

I did not meet Meyers until the latter part of 1928, by which time all the preliminary work on the project had been done. I had been appointed Engineer for the Citizens' Committee organized in 1923 to promote the project and was authorized in 1924 by the Counties of San Francisco and Marin jointly to apply for a War Department permit and prepare the necessary plans, had conducted the War Department hearing, served the Citizens' Committee in all its activities, acted [3] as expert witness in all the

litigation. As a result of these activities the District was formed in the month of December, 1928.

By that time the opposition had intensified to the extent that they had organized a wide-spread campaign against the bridge project and myself, using every means in their power to defeat the project. Meyers, who happened to be in San Francisco in connection with certain promotional activities on a bridge to Oakland, persuaded me that he could be of great assistance as public relations counsel in offsetting the hostile propaganda, in molding public opinion, and in helping in the bond issue campaign in general. By reason of what I had been told and the recommendation by General Goethals, I accepted these statements at face value. That I was misled, later development showed.

The nature of his employment by me was on a contingent basis. Had he capably performed the promised services there is no doubt but that the compensation originally agreed upon, while considerable, would have been justified by the character of the project and its magnitude and uncertainties. Under my arrangement with him, assuming my retention as Engineer and the successful promotion of the project, there was to become due him, according to his estimate, a sum total of \$220,000. This computation was objected to by me at the time but because of the distance I had gone in the development plans and my desire for harmony, I accepted the estimate. Since then, and in view of the revelation to me of the falsity of his representations and his failure to comply with some of his promises, and

his inability and failure to render services, I entered into litigation over payments becoming due. On the advice of my counsel, the litigation was settled and compromised and an agreement of settlement signed. At the time, Meyers was paid \$15,000, and if he complied with the terms of said agreement, [4] an additional sum of about twice that much is yet to be paid.

If what you tell me concerning his recent misrepresentation is correct, then Meyers has breached the settlement. I am now investigating that feature and I shall appreciate your assistance in discovering the facts.

Meyers never had any contact with the Bridge District. He is in no way responsible for the conception of the project, its development, its financing or its consummation. Meyers was to offset the opposition against myself personally and my arrangement with him had nothing to do with the project proper. The opposition had tried to prevent my appointment as Engineer and had made me the target for attack.

The Golden Gate Bridge was conceived, developed and carried through by me, and until 1929, when I was appointed Chief Engineer, I received no compensation whatever and paid all costs myself, and what I have received since then will be scarcely sufficient to enable me to break even. In my opinion, Meyers did nothing for the bridge except to hurt it, and one of the reasons for many difficulties I have had to contend with, is the association that I entered into with Meyers.

Meyers at no time had any connection, real or imaginary, with the Strauss Engineering Corporation or with Strauss & Paine, Inc. At no time that I have known him has he been possessed of any means. On the contrary, he was continually claiming to be in need of money, and it was on this basis he succeeded in extracting from me much of the money that he collected.

Meyers had the habit of painting rosy pictures of his contacts, his influence and the large amounts due him from various people and his ability to close up and secure business, none of which, in my opinion, had any foundation in fact.

Yours very truly,

JOSEPH B. STRAUSS

JBS-m[5]

2. The District Court erred in denying the motion to strike Exhibit 98 and the motion that the jury be instructed to disregard the same; and the further motion for a mistrial as relating to the above assignment of errors.

3. The District Court erred in admitting the evidence, over the objection of the defendant, Government's Exhibits 110-G, 110-H and 110-I, being income tax returns for the years 1937, 1938 and 1939; objections to said admissions being on the grounds that the same were incompetent, not properly identified or authenticated, immaterial and violating the constitutional rights of the defendant under the fifth amendment of the Constitution of the United States.

Mr. Hile: I would like to offer, your Honor, at this time authenticated copies of 110-B, I think that is the first one of the income tax returns of the defendant Meyers for 1932; 110-C for the year 1933; 110-D for the year 1934; 110-E for the year 1935; 110-F for the year 1936; 110-G for the year 1937; 110-H for the year 1938; and 110-I for the year 1939.

The Court: Any objection?

Mr. Simon: I have a special objection to a couple of them, your Honor.

Mr. Hile: They are duly authenticated by the various departments, your Honor.

Mr. Simon: I object to them all, and to each and every one, your Honor, for the reason and upon the ground that they are not properly authenticated. And I want particularly to object to——

The Court: Is the authentication the same on every one of them?

Mr. Hile: Yes, it is. I wouldn't say it is identical, but in each case it is from the Chief Clerk of the Treasury Department. [6]

The Court: The Court didn't have in mind whether different individuals were involved.

Mr. Hile: Oh yes, it is the same.

The Court: The objection on the ground of authentication will be overruled.

Mr. Simon: I wish, if your Honor please, to make a further objection to 110-G, 110-H and 110-I for the reason that—and upon the ground that these are returns which the defendant is under the law required to make, and that they were required to be

made subsequent to the return of the indictment in this case, and that their reception in evidence in this case would be in violation of the defendant's constitutional rights against self-incrimination, 4th and 5th amendments to the constitution of the United States.

The Court: Overruled.

Mr. Simon: Exception.

The Court: Exception allowed. They will be admitted.

(Income tax returns for the years 1932 to 1938 inclusive, and 1939 were admitted in evidence as plaintiff's exhibits 110-B to 110-I inclusive.)

Mr. Simon: May it be understood that my objection, your Honor, goes to each of these separately?

The Court: Yes, it may be so understood and the record will so show.

Mr. Simon: Exception.

The Court: 110 all admitted.

Mr. Simon: May I add to the grounds of the objection to the last three, that the returns made for periods subsequent to the return of the indictment are immaterial, as pertaining to the issues? [7]

The Court: Yes. Those grounds will be considered by the Court. Exception allowed.

4. The District Court erred in permitting the witness, Earnest A. Troeger, to testify on behalf of the Government, as follows: Over the objection of the defendant appellant. That said testimony re-

lated to incidents which happened approximately 14 years before the alleged violation of the postal laws, as set forth in the indictment; that said testimony was incompetent, immaterial and too remote and the only purpose for said testimony, apparently was to show a similar scheme and device.

Q. Mr. Troeger, I think when we left off we were speaking about what, if anything the defendant Meyers said to your father in your presence, relative to employment. Was there such a conversation? A. Yes.

Q. Do you recall when this was?

A. At the time that contract was signed, about employment, and previous to that and thereafter.

Q. Have you refreshed your recollection by that contract plaintiff's exhibit—— A. Yes, Sir.

Q. What is the number in red up at the top there? A. 108.

Q. And what about the dates of the conversations, as you have them in mind?

A. Well, he made this contract and told Dad——

Mr. Simon: Well now, just a minute; That is not responsive to the question, if the Court please. You asked him, as I understand it, counsel, what was the date of the conversation with reference to the date of this contract.

Mr. Hile: No, I didn't. I asked him what the dates of [8] the conversations were, and to refresh his recollection by the contract.

A. He promised Dad that he would——

Mr. Simon: I object. That is not responsive to the question.

The Court: What date was this?

A. January 22, 1920.

Q. (By Mr. Hile): What, if anything, did Dr. Meyers say to your father relative to employment?

Mr. Simon: If the Court please, if this is conversations in the course of the preparation of this contract, then I think the conversation is incompetent under the parole evidence rule.

Mr. Hile: The parole evidence rule has nothing to do with this situation. We are not trying to prove this contract from a legal standpoint.

The Court: The Court fully understands the contract involved.

Mr. Simon: My point, your Honor, is if the negotiations about employment are material, then it seems to me the best evidence and the only proper evidence, unless there is some contention that the contract was fraudulent, is the contract itself. And in view of your Honor's ruling yesterday, when such a contract was fully carried out and there was no complaint about it, it would be immaterial and I think the preliminary conversations must likewise fall into the same category.

The Court: No action is being maintained on the contract. There is no purpose in citing the contract with the object of enforcing its terms or provisions. I don't know just exactly what the purpose of this testimony is.

Mr. Simon: It seems to me obvious. I made no objection [9] about this, but after all this is a matter that is fairly remote, having occurred in 1919,

and I think it is immaterial and I object to it upon the ground.

Mr. Hile: I can state the purpose, *if* your Honor please.

The Court: Similar conduct and acts, for the purpose of establishing intent in this case?

Mr. Hile: Yes, that is one of the aspects of the whole situation.

Mr. Simon: I object to it as being too remote, if that is the purpose.

Mr. Hile: I can either tell you or write out what the purpose of this particular question is.

The Court: You may go ahead and state it. The jury will be instructed to disregard it.

Mr. Simon: I object to the statement in the presence of the jury.

The Court: Proceed.

Mr. Hile: The purpose is to show that the defendant Meyers promised this witness' father employment for his lifetime; that this contract for two years was entered into thereafter by the exhibit which I have offered; that his contract was terminated and that he was not thereafter employed, as a part of this whole transaction.

The Court: I don't think that relates to this transaction or to the issues in the present case.

Mr. Hile: Well, it goes to show what relation the defendant Meyers had to the Translux Corporation, with reference to the notes and transactions as a whole, your Honor.

And I propose further to show by contract which I have and will offer, that the defendant's father—

I mean the witness' father, was ultimately put out of the picture. [10]

Mr. Simon: I object to the statement and I object to all of the evidence with reference to it upon the ground that it is wholly irrelevant and immaterial and that the statement of counsel is made wholly for the purpose of trying to get before the jury something that is not proper in evidence.

The Court: Well, there is no basis for your statement, because the counsel is proceeding upon the instructions of the Court. The jury is instructed to disregard it.

Mr. Simon: Exception.

The Court: The only concern of the Court is as to whether or not this matter is too remote for the purpose of proving intent in this case.

Mr. Hile: Then this contract to which I have referred, I will hand it to your Honor. It bears, I think, upon other issues in the case, as to what the occupation of the defendant was in reference to being a financier at this time.

The Court: Can the witness inform the Court as to when these matters came to an end?

A. In 1923.

The Court: The contract bears date 1923?

A. That is right. That is when the whole thing terminated. That was the final settlement.

The Court: The objection will be overruled. This line of evidence will be admitted with limitations. The jury is instructed, of course, that it is admitted not to prove any issue in this case, other than the bearing it might have, if any, upon the ele-

ment of intent, which is an important element in this case. An exception allowed.

Q. (By Mr. Hile): Going back to my question, Mr. Troeger, it was: What, if any, conversations were had by the defendant Meyers in your presence, either with yourself or with your father, or both, concerning employment? [11]

A. Dad was to be employed——

Mr. Simon: Just a minute; I will object to that for the reason and upon the ground that these conversations apparently antedated a written contract, and the written contract was signed and reduced to writing. There isn't any claim that I have heard yet that there was any fraud; that the man who signed the contract did not understand its terms and conditions.

As I understand it, even in a civil case, under those circumstances, the contract which was excluded yesterday is immaterial, fixes the term of the employment. Under those circumstances I don't believe that this witness, nor even the man who signed this contract, can say that he was told that the terms of the contract were to be something other than the solemn, written instrument of the parties at the time. And I object to it as incompetent.

The Court: The objection will be overruled and exception is allowed. Proceed.

A. The conversation was along the line,—Dad at that time was 70 years old, and he told him, he says, "Don't worry about a thing. You will always have a job. You will never need to worry about anything. Just leave everything to me. Do this

the way I want to go through with it, and you will always have plenty of money, and there will be nothing for you to worry about."

Q. (By Mr. Hile): With reference to this agreement, 108 for identification, what is that, if you know?

A. This is a contract for employment for a period of two years.

Q. Do you recognize the signature thereon?

A. Yes, sir. It is signed "Translux Company, Incorporated, by H. Harry Meyers, Vice-President."

The Court: The question was: Do you recognize it? [12] A. Oh, yes.

Q. (By Mr. Hile): Do you recognize the other signature thereon?

A. Oh, yes; that is my father's signature.

Q. Handing you what is marked Government's 109 for identification, I will ask you what that is, if you know?

You might, if you wish, just state its relation to 109, the contract.

A. This is a letter terminating,—not renewing the contract. In other words,—

Q. Can you recognize the signature on it?

A. That is Meyer's signature.

Mr. Hile: I offer 108 and 109 if the Court please.

Q. I will ask you: Was your father ever re-employed in connection with these companies?

A. No, he was not.

Mr. Simon: I object to these exhibits as incom-

petent, irrelevant and immaterial, and incompetent for any purpose in this cause.

The Court: Is that all of your direct examination?

Mr. Hile: No, your Honor. I have one more document.

Mr. Simon: I object to 108 and 109 for the reason that at this time in this proceeding they are entirely irrelevant and immaterial; not material to any issue in this case, there being no allegation——

The Court: The objection will be overruled.

Mr. Simon: And they are incompetent and hearsay.

The Court: Exception allowed.

Q. (By Mr. Hile): And calling your attention to Government's 110, I will ask you to examine that and state whether or not you recognize any of the signatures on that instrument?

A. Yes, sir. That is my father's. Percy N. Furber, Vice [13] President of the American Lux Products Corporation; Translux Corporation, Incorporated, H. Harry Meyers, Vice-President.

Q. Do you recognize those signatures?

A. I do.

Mr. Hile: I understand Government's 108 and 109 were admitted?

The Court: Yes.

Contract admitted in evidence and marked plaintiff's exhibit 108. Letter admitted in evidence and marked plaintiff's exhibit 109.

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Q. (By Mr. Hile): You say you had never had one with him? A. I had one with him.

Q. And what was that conversation?

A. It developed that——

Mr. Simon: I object to this line of testimony, if the Court please.

The Court: The Court has indicated its position on the matter, but of course it doesn't mean that we are going to try out the difficulties that arose in that past period of time.

Mr. Hile: No, your Honor, I am not going into that phase of it.

* * * * *

Q. And did you have any conversations with the defendant Meyers relative to the formation of other corporations, that is corporations other than the original company? A. Yes.

Mr. Simon: I object to that as irrelevant and immaterial.

The Court: Overruled.

Mr. Simon: Exception. [14]

* * * * *

Q. And with reference to the exhibits here bearing upon the collection of the notes, that is 103, 104, 105 and 106, I will ask you what, if anything, you did in connection with the collection of the notes referred to in those letters?

A. I went to the bank and tried to get them to discount them.

Mr. Simon: Now, I object to that and move that the answer be stricken, your Honor. We are cer-

tainly not bound by the activity of this man with third persons.

The Court: The objection will be overruled and motion denied.

Mr. Simon: Exception.

Q. (By Mr. Hile): Were you successful or not?

Mr. Simon: I object to that as irrelevant and immaterial.

Mr. Simon: Exception.

Q. (By Mr. Hile): Were you successful or not?

Mr. Simon: I object to that as irrelevant and immaterial.

The Court: Overruled.

A. The bank wouldn't discount this note without an endorser.

Mr. Simon: I move that that last portion of the answer be stricken as hearsay, incompetent for any purpose, and I ask that the jury be instructed——

The Court: Motion denied.

Exception allowed: Let's proceed. [15]

Q. You didn't raise any objection to the fact that this contract provided that the agreement should cease on the 31st day of January, 1922?

A. I did not.

Q. And despite your objection, despite the language of this contract, which you perfectly understood and your father understood, your father signed this contract and acknowledged it before a Notary Public?

A. That is true.

Q. And at the time he signed it, he knew that it contained those provisions about agreeing to perform the services to the satisfaction of the first

party, and also that the employment was to terminate on the 31st day of January, 1922?

A. Yes, that is true.

Mr. Simon: I renew my motion to strike the testimony with reference to these oral conversations.

The Court: The motion will be denied and exception allowed.

5. That the District Court erred in admitting in evidence, over the objection of defendant-appellant, that the same was incompetent, immaterial, irrelevant and hearsay, Government's Exhibit 95 for identification, being a volume describing the history of the construction of the Golden Gate Bridge, purportedly compiled under the direction of Joseph B. Strauss, and at the time said Exhibit 95 for identification, was offered in evidence, the following testimony was given:

Q. Handing you what is marked as Government's 95 for identification, I will ask you what this is if you know, Mr. Felt:

A. That is the final report made by Mr. Strauss, Chief Engineer, at the completion of the project.

[16]

Q. Is that an official report put out by the District?

A. Yes. It was authorized and paid for by the District.

Q. That constitutes an official report on the things it purports to report? A. It does.

Mr. Hile: I offer that in evidence, if the court please.

Mr. Simon: I would like to see it.

Q. (By Mr. Hile): With respect to the matter of a bridge bond election, Mr. Felt, the information was set up by the District, the Golden Gate Bridge District? A. That is correct.

Q. And do you know what, if anything, the defendant Meyers had to do with that?

A. I know of nothing.

Q. Did you at any time ever hear that the defendant Meyers had anything to do with the Golden Gate Bridge?

Mr. Johnson: I object to that as repetition, your Honor.

The Court: He may answer.

A. At what time? What period of time do you refer to?

Q. Well, I am referring to the whole period of time, as to whether or not you heard anything that was said whereby he was purported to be connected with the Golden Gate Bridge construction?

A. No.

Mr. Hile: I have no further questions, subject to this exhibit, your Honor.

The Court: Any objection, Mr. Simon? [17]

Mr. Simon: Yes, your Honor. I object to it upon the ground that it is incompetent and hearsay and it is irrelevant and not material to any issue in this case.

The Court: What is the purpose of the offer?

Mr. Hile: The purpose of the offer is to show by the official report of the District, through Mr. Strauss, who the persons were who were connected with the bridge, as shown by the official report.

The Court: In that the defendant's name does not appear?

Mr. Hile: Does not appear.

The Court: The objection will be overruled and exception allowed.

The final report by Mr. Struss admitted in evidence and marked plaintiff's exhibit 95.
(1265-1266)

6. That the District Court erred and abused its discretion in unduly and improperly restricting the cross-examination of the witness, John S. Swenson, called on behalf of the Government, in that the Court arbitrarily refused to allow the cross-examination of said witness to establish the animus and bias of the witness, Swenson. The following proceedings took place:

Q. Mr. Swenson, when the Grand Jury was in session over here in Tacoma in the fall of 1937, and it was rumored that they were considering an indictment in this case——

Mr. Hile: I object upon the ground that the question shows the proceedings of the Grand Jury and there is nothing that would warrant——

The Court: Let counsel finish his question.

Q. (By Mr. Simon): Isn't it true that there were literally hundreds of people who came to this building and [18] asked permission to appear before the Grand Jury; and isn't it true that you told them that you assumed the responsibility of telling them that they couldn't go before the Grand Jury to testify in opposition to the issuance of an indictment in this case?

Mr. Hile: I object to the question upon the ground that what the Grand Jury does is entirely up to the Grand Jury. It has no bearing on this case. We are trying the cause on the evidence here.

The Court: Objection sustained.

Mr. Simon: Exception.

Q. Mr. Swenson, is it true that you were in the District Court of the United States for the Western District of Washington, Southern Division, Seattle, before the Honorable Lloyd Black on the 26th day of November, 1941, in the proceedings in this cause when the defendant, William Markowitz made application for a stay of execution for sixty days, and when there was presented to the District Judge, Black, a communication from the Attorney-General of the United States recommending that——

Mr. Hile: Just a moment, your Honor. I don't see where this has any bearing on the case at all, what happened in proceedings as against these other defendants in 1941 in connection with this case, unless counsel assures us it is something in reference to the defendant here.

Mr. Simon: I would like to complete the question. I will complete it in the absence of the jury if the Court has any notion that I am saying something that is improper.

Mr. Hile: I ask that the jury be excused so that we can go into this matter.

The Court: The Court does not want to take the time to send the jury out time after time. Do you expect to follow that up with other matter. [19]

Mr. Simon: No, this is going to be my last ques-

tion of the witness, I think, as far as I now know, and I think it is proper as indicating his attitude.

Mr. Hile: I think this should be out of the presence of the jury, because I was there also and I know what occurred.

Mr. Simon: I have got a stenographic transcript of what occurred and I think it is relevant.

The Court: The jury may step out into the hallway for a few minutes.

(Whereupon the jury was excused and the following argument was had out of their presence and hearing.)

Mr. Simon: I offer to show by the testimony of this witness and I believe that he will answer if allowed to have the question put to him, that on the 26th day of November, 1941, when there was pending in this cause an application of the defendant William Markowitz for a stay of execution for a period of sixty days to allow the Attorney-General, through the office of the Pardon Attorney, to make an investigation of the defendant's claim of innocence, lest there be a possible miscarriage of justice, because the defendant had never produced a defense witness upon the prior trial; that when the United States Attorney, pursuant to directions of the Attorney-General of the United States, told the District Judge that it was the recommendation of the Department of Justice that such stay of execution be granted, this witness urged that the Court not grant the request for a stay of execution.

Mr. Hile: Now, what possible bearing has that on this case against this defendant?

What happened was we were instructed by the Attorney-General to make such a recommendation. We told the Court [20] that upon instructions of the Attorney-General we were making such and that is all there was to it. What has that got to do with the guilt or innocence of this defendant, Mr. Meyers? Not one iota.

The Court: Unless it goes to the animus of the witness.

Mr. Simon: That is exactly our point.

Mr. Hile: Well, we were all of the same view, that the Court shouldn't do anything and the Court didn't.

Mr. Simon: The point is that this man violated—at any rate went contrary to the instructions of the Department of Justice of the United States.

Mr. Hile: He wasn't working for the Department of Justice. He was not in that capacity at all. He was then a postal inspector and was not connected with the Department of Justice.

Mr. Simon: A different uniform now.

Mr. Hile: Because an Assistant Attorney-General or somebody else writes a letter to us telling us to make such a recommendation, has no bearing upon Mr. Swenson, who was working for the Postal Department, and was not under the direction of the Attorney-General. The stay of execution was opposed not only by him but by all of us.

Mr. Simon: Now, that is not true. You know that your chief stated in view of the direction of the Attorney-General he was required to remain silent.

Mr. Hile: That is right. But what is the implication? We were opposed to it and that is the fact.

Mr. Simon: The implication is that you refused to carry out the orders of the Attorney-General of the United States.

Mr. Hile: No, not at all. The implication was we were giving it to the Court, and that is what we did.

The Court: I think, Mr. Simon, I will have to sustain the objection to this line of inquiry. [21]

The Court: You may make your offer if you want to further complete your record.

Mr. Simon: Your Honor, I offer to show that at that time when, by direction of the Assistant Attorney-General of the United States in charge of criminal prosecution, Mr. Wendell F. Berge, the United States Attorney's Office in this District, was directed, in the event that Mr. Markowitz should make application for a stay of execution, to recommend to the Court that the stay be granted to the end that the Pardon Attorney would make a complete investigation with reference to the claim of innocence of the defendant, Markowitz, lest there be a miscarriage of justice.

And I offer to show further, your Honor, that upon that occasion the Court stated as follows: "I am assuming that from what was said by Mr. Swenson in Tacoma that it is his intention to oppose probation. Is that still his position?"

I will show that he had opposed a similar thirty-day stay—this was a request for a continuance of

sixty days—both of which had been recommended by the Attorney-General.

“Mr. Swenson: Yes, your Honor, it seems to me that there has been an unusually long delay in this case up to this time. The case started in the early part of 1934—that is the scheme started in the early part of 1934. My investigation started in the early part of 1936, and the indictment on which the trial was had was not returned until September 2, 1938. The sentences were imposed on August 29, 1939 and it took the Court of Appeals a long time to hand down that decision, and since that time the matter has been before the Supreme Court, and the Supreme Court decided it was not a cause that they were warranted in interfering with. I think there has been a much longer delay than is usual or [22] warranted.”

“The Court: I am assuming, speaking for yourself alone, you feel that the request contained in the telegram of the Assistant Attorney-General for a sixty-day further stay, in the event probation is denied, should not be followed by the Court?”

“Mr. Swenson: My recommendation would be that the sentence be made effective as soon as practical.”

The Court: Do you object to that offer?

Mr. Hile: I do object, your Honor.

The Court: The objection will be sustained and exception allowed.

Mr. Simon: And the point to which that is directed, your Honor, is that the matter of the selection of witnesses and the matter of producing or withholding evidence has throughout this case been

in the almost exclusive control of this man who has by this course of conduct indicated his animus and bias.

Mr. Hile: That statement is absolutely denied. It has been within my discretion that witnesses would be called and what would not be called.

The Court: The Court is familiar with proceedings before a Grand Jury and will take judicial notice of the fact that the Grand Jury is an arm of the court. The Attorney attending upon them, the United States Attorney, the Assistant Attorney or whoever is representing him, or if it is the Postal Inspector, if the postal laws are involved, to present the facts such as they find them, and to follow the instructions of the foreman of the Grand Jury, members of the Grand Jury of the United States Attorney. And I cannot indulge any presumption that any of the parties, including the Postoffice Inspector, did anything more than their duty in this case. [23]

Bring in the jury.

Mr. Simon: Exception.

The Court: Yes.

7. That the District Court erred in admitting the evidence, over objection of defendant-appellant. That the same was incompetent, Government's Exhibit 23, being a letter purportedly signed by the witness, Hurwitz for Luther Weden and purports to rescind a resolution previously passed by the Northwestern Gas & Oil Association, and the following proceedings took place:

Q. '30 or '31. Now, referring to the resolution which appears on this exhibit of the Northwest Gas & Oil Association, I will ask you whether or not that resolution was ever rescinded, if you know?

Mr. Simon: I object to that as not proper re-direct examination.

The Court: Overruled. Exception allowed.

Mr. Simon: Exception.

A. Yes, sir.

Q. (By Mr. Hile): And when, if you recall?

A. I believe in November, 1935.

Q. Handing you what is marked as plaintiff's exhibit 23, I will ask you if you recognize that as being a photostatic copy of anything that you know of?

A. Yes, sir.

Q. And what?

A. It is a photostatic copy of a letter that was sent.

The Court: Just a little louder.

Mr. Hile: Yes, please.

A. It is a photostatic copy of a letter sent to the Peoples Gas & Oil Company, Peoples Gas & Oil Development Company, rescinding the resolution.

[24]

Q. And who signed that letter, if you know?

A. I signed that with the name of Luther Weden, who was chairman of the committee.

Q. And how did you happen to sign it as his name?

A. Because he couldn't wait, and with his permission I signed it.

Q. I didn't hear your last statement.

A. With his permission, I signed it.

Q. He authorized you to sign it?

A. Yes, sir.

Mr. Hile: I offer this in evidence, your Honor.

Mr. Simon: We object to it as incompetent.

Mr. Hile: I might state that the original of that is in the Court's custody, and I could substitute the original if it is necessary.

The Court: I don't understand the objection is based on the fact that it is not the original.

Mr. Hile: I don't understand that he did.

Mr. Simon: Not at all. I am not raising that question your Honor.

Q. (By the Court): When did you say that the resolution was recinded?

A. I believe it was in November, 1935 or 1936.

The Court: This letter bears date March 17, 1936.

A. Then it was March. I don't remember.

The Court: 1936.

A. Six or seven years ago.

Mr. Simon: I call your Honor's attention to the fact that admittedly, according to counsel's opening statement, the lease sales had terminated at the time this letter was written.

Mr. Hile: Is that dated March, your Honor?

[25]

Mr. Simon: Yes, March, 1936.

Mr. Hile: April 15 is the date the sales stopped.

The Court: It will be admitted in evidence. Exception allowed.

Photostatic copy of the letter admitted in evidence and marked Plaintiff's Exhibit 23.

Said Exhibit 23 reads as follows:

Northwest Oil and Gas Association

312-313 McDowall Building

Seattle, Washington

Phone Eliot 8363

March 17, 1936

No. 15187

PLAINTIFF EXHIBIT 23

ADM Oct - 8 1942

Peoples Gas and Oil Development Co.

Peoples Gas and Oil Co.

Seattle, Wash.:

Gentlemen:

You are herewith notified that the Executive Committee of this Association has been instructed to withdraw its resolution of March 19, 1934 offering cooperation to the Peoples Gas and Oil Development Co.

At the time this resolution was adopted our committee was given to understand and pledges were made thereto that your companies had a legitimate program looking to the development of the petroleum resources of this state. It has become obvious, through the repeated misrepresentations made by your agents, and by the malicious practices of your officials, that your conduct here is not in accord with the ethics of honest administration required

by this association, nor with the spirit of cooperation in which it is organized. [26]

Your immediate return of the letter conveying the resolution is requested, and you are herewith formally notified that its use in any sales literature or campaign is forbidden, and that proper steps will be taken to enforce these instructions, should you not willingly accede.

Yours very truly,

NORTHWEST OIL AND GAS
ASSOCIATION

LUTHER WEEDIN

Luther Weedin, Chairman
Executive Committee

LW ET [27]

8. That the District Court erred in rejecting Defendant's Exhibit A-122 for identification, said letter being dated June 23, 1934, and signed by Ward B. Blodgett, and addressed to W. A. Broome.

Q. (By Mr. Simon): Calling your attention, Mr. Blodgett, to Exhibit A-122 and A-123, I will ask you whether A-122 is the letter you wrote on or about the date it bears, to Mr. Broome and whether A-123 is the answer that you received to it?

The Court: What is your answer, Mr. Blodgett?

A. Yes, I remember those letters.

* * * * *

A. Yes, that is the letter.

Mr. Simon: I offer this exhibit in evidence.

Mr. Hile: I object to 122 and 123 because it

doesn't bear, in my opinion, at all upon the Advisory capacity, which we have mentioned.

The Court: Pass them up.

Q. (By Mr. Simon): Mr. Blodgett, calling your attention to Defendant's A-125 for identification, I will ask you whether that is a reply that you wrote, at the request of whoever——

A. (Interrupting): Broome.

Q. ——of Mr. Broome, after an examination of this file? A. Yes, it is.

Mr. Simon: I offer A-125 in evidence.

Mr. Hile: With respect to 124, I have no objection.

The Court: It will be admitted in evidence.

Letter from Broome admitted in evidence and marked Defendant's A-124.

Mr. Hile: With respect to A-125, I have not had an [28] opportunity to read it yet.

Q. (By Mr. Simon): Mr. Blodgett, with reference to A-125, I will ask you if that was rendered after you requested your name be removed from the advertising matter. A. Yes, it was.

Mr. Hile: I object to it on the ground that it is not within the scope of the Direct Examination.

The Court: I didn't hear any questions about that.

Mr. Hile: A-125 has been identified by the witness as the reply he wrote to Mr. Broome. I asked him whether it had been written before or after he advised them to quit using his name and he said after. So, thereupon I assume it is not within the scope of our examination. This is opening the

field. I have no objection to this witness either being called now as a witness for the defense upon this other aspect, or holding him here, but our case has developed sufficient as to the geology, I think, and I think they should make him their witness, if they wish to pursue the matter or replies to inquiries from a geological aspect.

Mr. Simon: I think that bears on the proposition that he was a member of the——

The Court: 122 and 123, Mr. Simon, do not bear upon that. They might be competent in defense but they would not bear upon the issue of whether he authorized his name to be used or not to be used. The objection is sustained as to that.

Letters previously marked for identification A-122 and A-123 were rejected.

Said Exhibit A-122 for identification, reads as follows: [29]

WARD H. BLODGET

342 Petroleum Securities Bldg.

714 West Tenth Street

Los Angeles, California

June 23, 1934

No. 15187

DEFENDANT EXHIBIT A 122

Not Adm.

Mr. W. A. Broome, President,
People Gas & Oil Development Company,
Suite 410, Fourth & Pike Bldg.,
Seattle, Washington

My dear Mr. Broome:

An old friend of mine, who is in the oil business, and has spent some time in Seattle recently, called me on the phone the other day and told me, in a sort of facetious way, that he was surprised to find that I was aiding in a program to put the State of Washington in the business of distributing gasoline. When I pleaded ignorance as to what he was talking about, he told me that he had seen my name used in connection with publicity about an oil and gas prospecting venture in Washington and that the promoters seemed to be very definitely linked up with the sponsors of an initiative petition to permit the State to distribute gasoline. He said that he had seen newspaper clippings quoting you as saying that the major oil companies were gouging the public on price and that statements over the radio lead him to conclude that I was part

and parcel with the group endeavoring to put over the initiative.

I am wondering now if this friend of mine knows what he is talking about. I cannot, for my part, see [30] that the success of this initiative would be of any aid to your planned operations in Washington; as a matter of fact, I should think that it would be harmful in the long run. I understand here that all of the independent companies of California distributing gasoline in Washington are against the bill, and I can't help but feel that it will do us no good as a potential producing oil company to foster the measure.

It probably is true that the price of gasoline is too high in the northwest, but I should think that if the State goes into the business on its own hook it would create a situation still worse and would not help us if you succeed in developing oil.

Of course I am so far away that I do not know all of the angles which you have to face, but I hope you do not go too strong in your propaganda against the major oil companies. I can feel the reactions against myself clear down here because my name has been mentioned in connection with your company and of course you know my business is nearly all with the large oil companies.

Let me know the true situation so that I can combat any adverse criticism down here.

Has the company of which Roberts and you and I participate been organized?

With best wishes for successful development I remain

Very truly yours,

WARD B. BLODGET

WBB:DD [31]

9. The District Court erred in rejecting Defendant's Exhibit A-123 for identification, being letter dated June 26, 1934, written by W. A. Broome to Ward B. Blodget, being in answer to Defendant's Exhibit A-122 for identification, which letter reads as follows:

"June 26, 1934

Mr. Ward B. Blodget Esq.
342 Petroleum Securities Bldg.
714 West 10th Street
Los Angeles, California

My dear Mr. Blodget:

I was glad to receive your letter of June 23 and hasten to let you know the true situation.

Neither my company or myself have ever been linked up in any way with the initiative petition, the sponsors of which seek to permit the state to distribute gasoline. My personal attitude is precisely the same as yours in the matter, in that I fail to see how it would benefit either major or independent oil companies. I have always adopted an attitude diametrically opposed to either participation in or interference with private enterprise by either state or federal officials. I believe there is altogether too much damnable paternalism on the

part of petty politicians now—without adding to the situation.

The price of gasoline is undoubtedly very high throughout this area, but it seems to me that the only thing that will tend to cure that situation is the establishment of commercial production within the confines of the state.

Regardless of any quotations charged to me, I would welcome the presence of Mr. Kingsbury himself at any of the meetings or public gatherings which I have addressed up here. I have never criticized the major companies, on the contrary, [32] I complimented them very highly on the very business-like manner in which they have protected their marketing interests here. I can see no necessity for hammering the major companies in order to build interest in our project, as the interest is extremely keen now.

I hope that the foregoing will tend to clarify the situation for you as I should deeply regret any action of mine that might, even inadvertently, cause loyal friends like yourself any embarrassment or put you in a position where an explanation was required.

Answering your last question, the status of the participation in my interest is not yet settled, but I believe it will not take long to clear it up after Dr. Meyers returns here—which I anticipate will be in the next few weeks.

I have not as yet acknowledged the receipt of the last letter you sent me in answer to my inquiry as to geological services. I have the situation in

mind, however, and thank you most sincerely for the suggestions.

With kindest regards, old friend, and best of good wishes,

Yours very sincerely,

PEOPLES GAS AND OIL DE-
VELOPMENT CO.

.....

William A. Broome
President

WAB:LFN”

The offer and testimony in connection therewith have been set forth under assignment No. 8.

10. The District Court erred in rejecting Defendant’s Exhibit A-131 for identification, which is a carbon copy of [33] the letter, dated June 1, 1934, addressed to the witness, Dwight C. Roberts, written by W. A. Broome, said letter reading as follows:

“June 1st, 1934

Mr. Dwight C. Roberts
2000 West 12th Street
Los Angeles, California.

My dear Pop:

I wrote you under date of April 25th, but up to now have received no word from you, consequently I am compelled to believe that you failed to receive my letter. For that reason, I am enclosing copy of it. Otherwise, this letter might not make sense.

Things are moving along very nicely and under the most favorable of auspices and everything is being run as clean as a “hounds tooth”.

We are going over specifications at this time for the putting in of a heavy duty standard rigging. I wish you would let me know immediately if you know of a first class cable equipment that can be obtained in California. I have one outfit in mind in Wyoming which we might be able to use, but in California where cable is not being used much any more. I would appreciate a response from you on this.

I am expecting and hoping to be able to turn you loose on some real work up here very shortly, providing your other duties do not render your services unavailable, and wish you would let me know how things are shaping up for you so that I shall know what to do. I also wish you would let me know what those services are going to cost me over periods reaching from one month up.

I had the pleasure of a visit from your friend Mr. Curtiss, Geologist, on Monday of this week. He brought a friend of his with him and visited for some considerable [34] time. He is on his way to Alaska. We had quite an interesting talk together in which he told me of the circumstances on which he parted from you some two weeks previously. I wish I had been with you but I am glad to know that you are still as capable as ever along those particular lines.

Mr. Sheldon Glover, State Geologist in charge of Non-Metallic Minerals Division for the newly created State Natural Resources Conservation Board here, visited the well with me about ten days ago. We are having splendid cooperation from him and

his chief, Dr. Culver. We are running 12½" casing in the hole and the prospects look tremendously interesting.

I had a fine letter from Kim Hollins a few days ago and I am asking him to please let me hear from him at his earliest convenience.

Hoping to have the pleasure and privilege of seeing you up here very soon, please believe me to be as ever,

Your sincere friend,

WILLIAM A. BROOME

WAB:FB"

Q. (By Mr. Simon): Mr. Roberts, you have examined Defendant's Exhibit for identification No. A-131?

A. Well, I think so. I don't remember the number. Is that the letter I just looked at?

Q. Yes.

A. Let me look at it again so as to be sure.

Q. Do you recognize that as a carbon copy of a letter you received on or about the date it bears, from Mr. Broome?

A. Yes.

Mr. Simon: I will offer that in evidence.

Mr. Hile: I would like to ask the witness a question.

The Court: Very well. [35]

Q. (By Mr. Hile) Is that Exhibit A-131 to which you have just looked received in connection with or have any bearing on your acting as a member of the geological committee?

A. It has a bearing on my objection to being placed on an advisory committee, which I did not know about until about this time, almost three years after this first letter that has been spoken of.

Mr. Hile: I am wondering if you do not misapprehend the instrument. I wish you would look at it again, please.

A. This is the one of the year before, isn't it? I remember this letter, yes.

Q. Does that have any connection with your acting or being requested to act on any geological advisory committee? A. No.

Mr. Hile. I object then on the ground that it does not have any bearing by its contents, as far as I can see or ascertain.

Mr. Simon: Calling the Court's attention to the fourth paragraph of the letter.

The Court: I still think, Mr. Simon, it is rather remote from the direct examination and goes pretty far afield in the field of cross-examination. I sustain the objection and allow an objection.

Mr. Simon: May I inquire from the witness?

The Court: I thought you had.

Mr. Simon: Well, about the specific provisions of the letter, whether or not Mr. Broome did not discuss with him in this letter the matter of his employment in connection with the geological work of the drilling of Donnie Boy well and whether that is not—

Mr. Hile: Even so—

Mr. Simon. That is what I thought. [36]

Mr. Hile: I thought the Court had ruled upon it.

The Court: You may ask him that question. Proceed and ask him that question.

Mr. Hile: What was the question?

Mr. Simon: I am asking the witness whether the fourth paragraph of this letter did not refer to the contemplated employment at that time, June, 1934, of this witness in connection with the performing of engineering services of this witness on the drilling of Donnie Boy?

A. Well, he merely asked me, "I wish you would let me know how things are shaping up for you so that I shall know what to do. I also wish you would let me know what those services are going to cost me over a period reaching from one month up." I don't recall that I ever answered this letter. But there is nothing in here about the agreement. He is talking about remuneration here, aside from the agreement.

Q. (By Mr. Simon) What I am trying to inquire from you, Mr. Roberts, whether that letter did not inquire about employing you on this job, in connection with this job of drilling Donnie Boy in June, 1934 and whether or not that fourth paragraph of the letter does not refer to that.

Mr. Hile: I object to that.

The Witness: It doesn't say anything about Donnie Boy here.

Mr. Hile: It doesn't say anything about an advisory geological committee.

The Court: I think I shall sustain the objection

to any further questions on that. The specific issue is framed by the indictment here, that the Peoples Gas & Oil Development Company had in its service a highly qualified advisory board composed of prominent petroleum geologists and engineers, and that such board was composed of the following: Dwight C. [37] Roberts, George H. Stone and George C. Blodget, whereas in truth and in fact, said defendant well knew at said time they did not. Now, that is the issue.

Mr. Simon: That is right.

The Court: Anything that throws light upon the issue, the Government has seen fit to place this witness upon the stand and ask him, since he is one of the main persons in the indictment, if he was on the advisory board. He has answered in the negative. Now, anything that will tend to refute that is competent; but beyond that as to the relationship that might have existed in times past, unless they throw light on that issue, they are not proper as cross examination.

Mr. Simon: My position, if the Court please, is that these contracts under which Broome was entitled to his services, plus this letter which inquired about his assuming active duties in connection with the geological work on this particular project, are competent on the proposition of whether or not the statement of these men in this perspectus that they had arranged for the services of —

The Court: The statement does not say that they have any arrangement. The statement recites a definite fact, not something in the future.

Mr. Simon. It is not prospective.

The Court: I don't think we will get anywhere by further discussion of it.

Mr. Simon: Exception, your Honor.

Document previously marked for identification, Defendant's A-131 Rejected. [38]

11. The District Court erred in denying the following motions made by the defendant-appellant at the close of Government's case, to-wit:

"Mr. Simon: May it please the Court, at this time, the Government having rested, the Defendant H. H. Meyers moves for a dismissal of Count I of the Indictment for the reason and upon the ground that there is not sufficient competent evidence from which the jury could properly return upon the basis of which the jury could properly return a verdict of "guilty" upon the said Count, and that for the said insufficiency of the evidence the said Count should be dismissed.

The Court: The motion will be denied and exception allowed.

Mr. Simon: The same motion, may it please the Court, with reference to Count II of the Indictment.

The Court. The same ruling.

Mr. Simon: Exception. The same motion with reference to Count III of the Indictment.

The Court: The same ruling and exception allowed.

Mr. Simon: The same motion with reference to Count IV of the Indictment.

The Court: The same ruling and exception allowed.

Mr. Simon: The same motion with reference to Count V of the Indictment.

The Court: Likewise the same ruling.

Mr. Simon. The same motion with reference to Count VI of the Indictment.

The Court: Yes, I assume you desire to make the same motion as to all the other Counts of the Indictment?

Mr. Simon: Yes, your Honor. May it be understood that I am making—may it be understood that I have made [39] separate motions as to each of the thirteen counts of the Indictment, like the one made as to Count I?

Mr. Hile: No objection.

The Court: And the Court makes the same ruling with this exception: I have endeavored to follow closely the evidence as the case has progressed and I have made rather extensive notes and my notes indicate that there was some proof on the mailing on each of these various letters. Now, if I am in error on that, I would like to have my attention called to it; and likewise proof on each of the eight overt acts, as to Count XIII, the conspiracy count.

Mr. Simon: On the latter point, your Honor, I concede that there has been a *prima facie* showing as to at least one of the overt acts and I think that is sufficient.

As to the others, my point as far as the mailing has been concerned is that the mere testimony of

the receipts through the mails was from the mails by the witnesses of the documents in question is not sufficient evidence of the mailing or the carriage in the mails of the instrument in question; and that is the basis and the only basis upon which I raised that point. I concede, your Honor, that to each of these counts——

The Court. And as to each of the overt acts likewise?

Mr. Simon: No, I couldn't say that; but as I view it as far as the overt acts are concerned, proof of one overt act would be sufficient, and I concede that there has been a *prima facie* showing of at least one overt act, but I don't recall which one.

The Court: If there are any on which there has not been proof, the Court would like to be advised of that now, because in instructing the jury I would withdraw that from them. [40]

Mr. Simon: I think there are several overt acts on which the Government has not sustained the burden of proof.

Mr. Hile: Some I think we mentioned we would not attempt to prove, your Honor. That would be six and seven, the public meeting in Eagles Hall, the public participations, and the security and petroleum royalties corporation.

The Court: I have six noted as "no proof offered",

Mr. Hile: And as I understand it also from the Indictment have been withdrawn or will be withdrawn that portion thereof relating to securities petroleum and the parts I mentioned to your Honor

when we first—we will withdraw the parts with relation to that. Now, that is not at our request but I understand the Court is doing so.

The Court. Yes. Of the overt acts, six and seven, the Government made no showing whatever in reference to those.

Mr. Hile: As to six and seven,—well, there was some evidence I think on seven.

The Court: There was evidence of a meeting of certain managers in Seattle.

Mr. Hile: That was gone into, but six, there was no proof as to that. Well, now there was some.

Mr. Johnson: There was nothing on seven.

Mr. Hile: Through Christensen, that they called the sales managers together and explained about the participation. It is not mentioned in the overt acts.

The Court: Unless the Government can make some showing as to why the Court should not withdraw from the consideration of the jury overt acts Nos. six and seven, I shall be inclined to withdraw them.

Mr. Hile. Oh, seven does include the security and petroleum. That is right, your Honor, there was no evidence introduced on that and we have no objection to withdrawing overt act six. [41]

The Court: Both six and Seven?

Mr. Hile: Six and Seven.

The Court: Now, in the previous trial, one of the overt acts involving the mailing of a letter was withdrawn because of no proof of it in that case.

Mr. Hile: That is Dellis as I recall it.

The Court: Yes.

Mr. Hile: No. 3, is that the number?

The Court. Yes.

Mr. Hile: Yes, we did put——

The Court: My notes indicate that there was something on that.

Mr. Hile: There was. Mr. Dellis took the stand.

The Court: Very well.

12. The District Court erred in denying the following motion made by the defendant-appellant at the close of Government's case, to-wit.

Mr. Simon: If the Court please, at this time without waiving the foregoing motion, Defendant Meyers moves that the allegations of the numbered paragraph, Paragraph No. 1 on Page Four of the Indictment, as to the misleading and false pretensions representations and promises be withdrawn from the consideration of the jury for the reason and upon the ground that there is no sufficient competent evidence to warrant the submission of any issue on that point to the jury.

The Court: The motion will be denied and exception allowed.

Mr. Simon: That there be withdrawn from the consideration of the jury the allegations of Paragraph Three of the outline of the scheme or artifice which is set forth [42] on Page Six of the Indictment, having to do with the connection of the Defendant Meyers with the engineering firm of Joseph B. Strauss, for the same reason and upon the same ground.

The Court: The same ruling and exception allowed.

Mr. Simon: That, similarly, be withdrawn from the consideration of the jury, the allegations of Paragraph Four of the said outline of misrepresentations upon the same ground, namely, that there is no sufficient competent evidence to warrant the submission of the issues found therein to the jury.

The Court: The same ruling and exception allowed.

Mr. Simon. The same motion with reference to Paragraph Five, your Honor, on the same ground.

The Court: The same ruling and exception allowed.

Mr. Simon: With reference to Paragraph Six, the same motion. There I think admittedly there has been no evidence in support of Paragraph Six; and I also call the Court's attention to the fact that Mr. Broome was a defendant upon the last trial and was acquitted, so that this allegation as to his representations of his experience would, I think, necessarily have been adjudged for the purpose of this trial to have been true.

The Court: I think I shall have to deny your motion for the same reason.

Mr. Simon: Exception.

The Court. Allowed.

Mr. Simon: The same motion with reference to Paragraph Seven on Page Nine of the Indictment, your Honor.

The Court: The same ruling and exception allowed.

Mr. Simon: The same motion with reference to Paragraph Nine of the Indictment, on Page Nine,

that where it is [43] said, that "defendant also owned or held a promising land in the Rattlesnake Hills district joining to a commercial-producing gas field." The proof shows that at least the defendant Broome actually did have—did hold these leases; and I think that as a consequence there isn't any proper basis for the submission of any issue under Paragraph Nine.

The Court: What have you to say about that, Mr. Hile?

Mr. Hile: First, I want to say that in the Broadside it was represented it was a holding of the Peoples Gas & Oil Corporation, your Honor. I am referring now to Plaintiff's Exhibit 21, and to the map on there showing Frenchman Hills and also the Rattlesnake Hills district, and under the explanation it shows "holdings of the Peoples Gas & Oil Corporation of Washington."

Now, there was no holding under the escrow, and the escrow never passed to anyone any title. In other words, it was just a transaction which was never consummated and never held by anyone, except the escrow holder, which was never released, held by Mr. Broome. If there was any holding, if you can call it a holding in the legal sense, which it is not, it was in the nature of an option on them and not shown to be held on behalf of any of the corporations.

Mr. Simon: The charge in the indictment is not, your Honor, that they falsely represented that the company held it. The charge is that the defendant—

Mr. Hile. "The said defendant."

Mr. Simon: Yes, "The said defendant". And the answer is that the company as such, which is not a defendant in this case, and the Government proof shows that the defendant Broome held, I submit, this land in Rattlesnake Hills negatives any charge of falsity in that representation. [44]

Mr. Hile: The corporations are only instrumentalities; and where it says "the defendant" it refers to their instrumentalities also; and the defendant Broome never purported to hold these.

Mr. Simon: Well, the charge in the Indictment is——

The Court: I will pass my ruling on Nine. I want to check on my notes on that. Now, is that all?

Mr. Simon: That is my motion.

The Court: Call in the jury.

13. The District Court erred in denying the following motion made by defendant-appellant at the close of all the testimony.

Mr. Simon: If the Court please, at this time, the Government having rested, the defendant renews each and all of the motions which were made on behalf of the defendant at the close of the Government's case in chief. That is to say the defendant, H. Harry Meyers, moves for a directed verdict of not guilty on Count I of the Indictment for the reason and upon the ground that there is no legally sufficient competent evidence upon which a verdict of guilty upon the said Count could be sustained, or upon which the jury might properly

find the defendant, H. Harry Meyers guilty upon the said count.

The Court: The motion will be denied and exception allowed. And I am wondering, for the purpose of expedition, and yet not in any way prejudicing your record in this matter, if you could not make a general statement, and if there are any grounds in addition to the grounds that were advanced at the close of the Government's case, you may state them.

Mr. Simon: May it be stipulated then, between counsel for the Government and myself, that a similar motion may be [45] regarded as made separately as to each count in this indictment upon the grounds stated as to the first, and that each of the motions are overruled and an exception allowed?

The Court: I do not know that the Court wants the record to show that he stipulates with the defendant; but I will accept the stipulation, and if anything additional has developed in the course of the defense, that has been brought in in the case, then I want you to bring it to the Court's attention and I would be glad to hear from you now. And, if not, I will accept the stipulation upon those grounds upon which you based your motion for a dismissal, for a directed verdict, or the same grounds that were advanced at the time the Government rested its case in chief.

Mr. Hile: I have no objection to such stipulation.

The Court: And the motions will be denied col-

lectively and separately, and an exception allowed in each instance.

Mr. Simon. Now, may I move similarly, the same motions, for the withdrawal of particular issues that I noted at the time of the close of the Government's case? That is your Honor will recall I moved to withdraw from the consideration of the jury the allegation of fraud set forth in paragraph 1 on page 4 of the indictment for the reason and upon the ground that there is not sufficient evidence upon which to submit the allegations of fraud to the jury.

The Court: I forgot the reference to the indictment.

Mr. Hile: It has to do with coming up to the state of Washington for the purpose of——

Mr. Simon: There was, literally, I think, no evidence that any representation was made that the defendants had “come up to the state of Washington from California for the purpose of developing the natural resources of the state; that they were proud to have become citizens of this state to develop its oil resources; that the state of Washington had [46] oil-bearing fields as well as California, and that they had come up to open them up; that the people of Washington had for too long been obliged to pay tribute to California for their oil; that the time had come to quit sending their money to that state; and that said defendants had come to help the people of Washington to keep their money at home by developing their own natural resources, whereas in truth and in fact, the said defendants

there and then well knew that the defendants came from California to the state of Washington because they believed conditions in the state warranted an oil development——

The Court: The motion will be denied and exception allowed.

Mr. Simon: I renew the motion similarly to withdraw the allegations of paragraph 3 on page 6 of the first count of the indictment.

The Court: The motion likewise will be denied and exception allowed.

Mr. Simon. The same with reference to paragraph 4.

The Court: The same ruling and exception.

Mr. Simon: The same with reference to paragraph 5.

The Court: The same ruling and exception allowed.

Mr. Simon: The same motion with reference to paragraph 6.

The Court: The same ruling and exception allowed.

Mr. Simon: May I say with reference to paragraph 6, our motion is amplified upon the ground that the defendant William A. Broome having been acquitted of the charge, and he being the person who was primarily acquainted with the truth or falsity of those allegations, we regard it as established by the verdict of the jury in the former trial that there is no proper basis for the submission of the allegations of paragraph 6 to this jury. [47]

The Court: Yes. I have given that consideration.

Mr. Simon: Thank you. Exception to your Honor's ruling as to 6 and the same motion, if the Court please, as to paragraph 7.

The Court: It will be the same ruling and exception will also be allowed.

14. The District Court erred in refusing to grant the defendant-appellant's motion for a new trial.

15. The District Court erred in admitting in evidence Plaintiff's Exhibit 38 over the objection of the defendant-appellant on the grounds that it was incompetent and hearsay as well as immaterial; said Exhibit being an article in the Aberdeen paper, reading as follows:

New Company Plans Big State Oil Tests;
Boom Likely If Oil Is Found

Production of oil and gas in Washington—if there is oil here—would do more to pull the state out of the throes of depression than any other type of development, J. F. Simons, of Seattle, president of the Peoples Gas & Oil Company, predicted today on a visit to Aberdeen. His company will open an office tomorrow in the Becker building, with H. Hirsh of Seattle in charge of the branch. Mr. Hirsh will make his home here.

The company is starting a state-wide development program, and has opened branches in Spokane, Tacoma, Yakima, Aberdeen, Vancouver, and Port Angeles. The company employs 400 people in the state.

It is not the purpose of the company to obtain funds for the purpose of drilling oil wells, but to enlist the sup- [48] port of the public for protection of a home industry if oil and gas is discovered. Mr. Simons said: "The money for drilling operations has already been appropriated. Already Financed. The development program is well financed, and is being undertaken by the Peoples Gas & Oil Development Company, an affiliated organization, of which W. A. Broome of Seattle is president and engineer in charge, and Dr. Harry Meyers is vice-president. Dr. Myers is the man responsible for construction of the Golden Gate bridge in San Francisco, Mr. Simons said.

* * * * *

"The venture is well financed, Mr. Simons said, with money already appropriated to bring the test well to completion, and outstanding geological opinion is that oil and gas will be found in commercial quantities."

At said time the following took place:

Q. (By Mr. Sager): Mr. Tusing, I show you what has been marked for identification plaintiff's exhibit No. 38. Will you examine that, please.

A. Yes.

Q. Have you seen a copy of that previously?

A. Yes, sir.

Q. And where, Mr. Tusing?

A. I got a dozen copies of it from the newspaper office in Aberdeen and mailed it to the Seattle office.

Q. At anybody's request?

A. Mr. Markowitz' request.

Q. That was while you were manager at Aberdeen?

A. Yes, that was the day I went down there that he asked me to get them. I did it a day or so later.

Q. The article that you have reference to is that portion which I have marked, is it? [49]

A. That is right.

Mr. Saeger: I offer it in evidence.

Mr. Simon: I object to it as irrelevant and immaterial at this stage of the proceedings.

Q. (By Mr. Saeger): Did you use that article in connection with your sales program there, Mr. Tusing?

A. I posted it on the bulletin board and referred people to it when it came handy. I didn't use it particularly in my sales kit, no.

Q. Did you refer it to the salesmen?

A. Yes.

Q. How did you get this request to send copies to Seattle?

A. How did I get the request?

Q. Yes.

A. Mr. Markowitz asked Mr. Hirsch if he had secured those copies of the paper. He said "I forgot it." He said "Can't you do that, Tusing, it is only a block from your office to the newspaper office." He directed me where, and I said I would be glad to do what he requested. And Mr. Markowitz said: "Please get a dozen copies and send them to me as soon as you can."

Q. Where did this conversation occur?

A. In the Aberdeen office.

Q. And what Markowitz was that?

A. William.

The Court: The objection will be overruled. It will be admitted in evidence.

Article in Aberdeen paper admitted in evidence and marked plaintiff's Exhibit 38.

Mr. Saeger: I would like permission to read this to the jury. [50]

Mr. Simon: I object, your Honor, upon the ground that the article is hearsay and incompetent as such.

The Court: Read some salient features, if you feel there are such. I don't want to take the time to read it all.

Mr. Simon: Exception to your Honor's ruling.

The Court: Yes, exception allowed for all adverse rulings, and you can take them, too, in order to save the record. Proceed.

(A portion of exhibit 38 read to the jury by Mr. Swenson.)

Respectfully Submitted

BERTIL E. JOHNSON,

Attorney for H. Harry Meyers, Defendant-Appellant herein, 1205 Rust Building, Tacoma, Washington.

Copy Assignments of Error Received Sept. 15,
1943.

J. CHARLES DENNIS,
United States Attorney,
JOHN S. SWENSON,
Special Attorney.

[Endorsed]: Filed Sept. 15, 1943. [51]

In the United States District Court, Western Dis-
trict of Washington, Southern Division

#10325

No. 15187

UNITED STATES OF AMERICA,
Plaintiff and Appellee,

vs.

H. HARRY MEYERS,
Defendant and Appellant.

CLERK'S CERTIFICATE RE SUPPLE-
MENTAL RECORD ON APPEAL

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the annexed and foregoing two pages constitute a full true copy of Order Extending Time for Filing Assignment of Errors, dated December 19, 1942, and Supplemental Praecipe for Portions of Record, dated November

27, 1943, in the above entitled cause, of record and on file in my office at Tacoma, Washington.

Witness my hand and official seal at Tacoma, Washington, this 27th day of November, 1943.

[Seal] JUDSON W. SHORETT,

Clerk,

By E. REDMAYNE,

Deputy.

[Endorsed]: Filed Nov. 29, 1943. Paul P. O'Brien, Clerk.

[Title of District Court and Cause.]

SUPPLEMENTAL PRAECIPE FOR PORTION
OF RECORD TO BE INCORPORATED
INTO TRANSCRIPT OF RECORD ON
APPEAL

To the Clerk of the above entitled Court:

You will please prepare the following portions of the record and to incorporate such portions into the transcript on appeal in the above entitled cause, to-wit:

1. Order extending time for filing assignment of errors, dated December 19, 1942.
2. This praecipe.

(Signed) BERTIL E. JOHNSON

Attorney for Defendant

H. Harry Meyers.

[Endorsed]: Filed Nov. 26, 1943.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
ASSIGNMENT OF ERRORS

This matter having come on regularly for hearing before the Court for the fixing of time for the filing of Assignment of Errors herein, and the Court being fully advised in the matter, it is hereby

Ordered that the appellant shall on or before the 16th day of July, 1943, and the time is extended to file with the Clerk of the above entitled Court his Assignment of Errors.

Done in open court this 19th day of December, 1942.

CHARLES H. LEAVY,
United States District Judge.

Approved by:

G. D. HILE,

Asst. United States Attorney,

BERTIL E. JOHNSON,

Attorney for Defendant.

[Endorsed]: Filed Dec. 19, 1942.

At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Friday the ninth day of July in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge,
Presiding,

Honorable William Healy, Circuit Judge.

No. 10325

H. HARRY MEYERS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME TO FILE AND
SETTLE BILL OF EXCEPTIONS, AND
TO FILE ASSIGNMENTS OF ERROR

Upon consideration of the motion of appellant, and stipulation of counsel for respective parties, and good cause therefor appearing

It Is Ordered that the time within which appellant may lodge his proposed bill of exceptions herein, and file his assignments of error be, and hereby is extended to and including August 16, 1943;

that the appellee may have to and including August 30, 1943, within which to propose amendments to said bill of exceptions, and that the bill of exceptions may be settled and filed on or before September 10, 1943.

At a stated term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the ninth day of August in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge,
Presiding,

Honorable William Denman, Circuit Judge,

Honorable William Healy, Circuit Judge.

[Title of Cause.]

No. 10325

ORDER EXTENDING TIME TO FILE AS-
SIGNMENTS OF ERROR, AND TO SET-
TLE AND FILE BILL OF EXCEPTIONS

Upon consideration of the stipulation of counsel for respective parties, and good cause therefor appearing,

It Is Ordered that the time within which appellant may lodge his proposed bill of exceptions, and file his assignments of error be, and hereby

is extended to and including September 15, 1943, and that the appellee may have to and including September 29, 1943 within which to propose any amendments to the bill of exceptions, and that the time within which the bill of exceptions may be settled and filed be, and hereby is extended to and including October 11, 1943.

In the United States District Court for the Western District of Washington, Southern Division

No. 15187

UNITED STATES OF AMERICA,

Plaintiff,

vs.

H. HARRY MEYERS,

Defendant.

APPELLANT'S PROPOSED BILL OF
EXCEPTIONS

Be It Remembered, That on to-wit this 5th day of October, 1942, at the hour of 10:00 a. m., the above-entitled cause came on for hearing before the Honorable Charles H. Leavy, one of the Judges of the above-entitled court, at the United States Court House in Tacoma, Washington.

The plaintiff appeared by J. Charles Dennis, United States District Attorney, G. D. Hile, Harry Sager, and John S. Swenson, Assistant United States Attorneys and Counsel.

The defendant appeared in person and by his attorneys, Arthur E. Simon and Bertil E. Johnson.

All parties having signified their readiness to proceed to trial, a jury was duly empaneled and sworn, and thereafter an opening statement for the Government was made by Mr. Hile.

Thereupon, Mr. Arthur E. Simon made the opening statement on behalf of the defendant, the said statement on behalf of the defense being in major part as follows: [1*]

DEFENDANT'S OPENING STATEMENT IN PART

By Mr. Simon:

First, the testimony in this case will show, concerning the defendant Meyers, that H. Harry Meyers is a man almost 70 years of age. Forty-six years ago he went to Europe as a boy, to England, where he lived for a great many years. There in England he organized the British Organo Therapy Company, which manufactured and distributed medicinal preparations, among them Denver Mud, an analgesic antiphlogistic preparation.

“Doctor Meyers”, as he became known, a courtesy title, is not a doctor. He has never had the advantage of a higher education at all, but by courtesy of these people he became called “Doctor” Myers, and among his friends as “Doc”.

Out of the organization of that British Organo-Therapy Company he made a very substantial for-

*Page numbering appearing at foot of page of original Bill of Exceptions.

tune. And while in Europe in the year 1906 he met General Chittenden of the U. S. Army Engineers, a resident and native, I believe, *of the U. S. Army Engineers, a resident and native, I believe*, of the state of Washington. General Chittenden at that time interested Dr. Meyers in the project which was Chittenden's life aim, the boring of a low-level tunnel through the Cascade mountains; and he was so sold, himself, on the desirability, feasibility and the economic desirability of that that he talked to Meyers about it so consistently and persistently that through the years, and especially later when Meyers married a Tacoma woman, and made frequent trips to this state, Meyers gradually acquired for himself the ambition as his outstanding life attainment to put through this Cascade tunnel. [1a]

After the organization and some years of activity in the British Organo-Therapy Company, Meyers for many years was associated with and employed by Baron Lichtenstadt, an investment banker in London. Meyers was his confidential investigator and correspondent, and as such went throughout the world, spent years on the continent of Europe and in England and in the possessions of the British Empire investing these large opportunities for the investment of British capital and making reports to his principal.

After the First World War broke out in 1914 Meyers, who was born in a little town in Indiana, who had always maintained his American citizenship, returned to the United States, together with a

distinguished former citizen of Cleveland, Ohio, the former secretary of Len Hanna, Mr. W. R. Hopkins, an attorney, Meyers shortly thereafter organized the United States Manganese corporation, to produce manganese for the Government in the World War. This company, which had extensive holdings of manganese on the eastern seaboard, was absorbed by, taken over, merged into Seaboard Steel, a large national corporation of which H. Harry Meyers, on that merger, became treasurer, a capacity in which he served for a good many years.

Among other concerns, he was instrumental in starting the Trans-Lux Ticker Company, a company that developed the patent on the Trans-Lux device that you may be familiar with a few years ago in broker's offices, through which the quotations appear on a screen, a highly successful company.

I want to say that until this particular venture came up, nothing that Meyers had ever been associated with in the form of an organization had anything to do with the sale of stock in the company. He is a promoter, but his promotions had nothing to do with the sale of stock. The companies that he organized, these activities that he was [1b] engaged in, were not the subject of public offerings.

Among the later companies that he had something to do with was that in 1925 he organized the San Francisco & New York Development Company, a California corporation, the purpose of which company was to build a bridge across San Francisco

Bay from down south of Market street some place across to Oakland. And the evidence will show, and it is undisputed, that Meyers acquired the first, and up to that time, the only permit that had ever been issued by the War Department of the United States for the construction of such a bridge across San Francisco Bay.

We will show further that that company, organized at that time, engaged as its engineer for the construction of that bridge, General George C. Goethals, the man who built the Panama Canal. By reason of political activity at that time, that project was unsuccessful. The Board of Supervisors of San Francisco, upon the insistence of Senator Johnson, decided that they would not grant a franchise for the construction of that bridge, but would reserve, under Senator Johnson's urging, it for a public bridge, rather than one to be built by private enterprise.

Dr. Meyers continued his activity on behalf of that transbay bridge. In 1929 our evidence will show that he became associated with Joseph B. Strauss, the engineer and architect who designed, not the trans-bay bridge, but the Golden Gate Bridge.

I was a little amazed to hear counsel state this morning that the Government would contend in this case that Meyers had nothing to do with that bridge, because the Government's own evidence upon the prior trial, and I assume that it will not change in this, showed the fact that for the [1c] service that Meyers rendered to Strauss in connection with that

bridge that Strauss agreed to and did pay Meyers in excess of a quarter of million dollars. The Government's own evidence, I say, showed that in the prior trial, and as far as I know it is undisputed now.

From 1929 to 1932 an association with Strauss and Meyers came up to this country again to try, incidentally, here, to build the Narrows bridge, and particularly to put life into the Washington Cascade Tunnel Association. Our evidence will show that in 1930 Strauss and Meyers were up here in Seattle in the activity to get that under way again. There was a project which would cost in the neighborhood of fifty million dollars. The answer is that our evidence will show in part that Dr. Meyers was motivated by the fact that he would acquire, he and his associate Strauss, a very handsome fee for the construction of that tunnel, but also because he regarded it as a life-long ambition that he had to do an outstanding piece of work for the citizenry of the state of Washington, something that, in his language, would make the people of the state of Washington forget the Lewis and Clark Expedition.

Now, further, pursuant to that fundamental interest of his, the evidence will show that he caused or was responsible for the introduction into the legislature and the passage of a bill in the 1935 legislature of the Act which became the Washington Toll Bridge and Tunnel Act, which gave authority for the construction of toll bridges and a toll tunnel, and set up an agency which could contract for the construc-

tion of this tunnel through the Cascades, which had been his prime ambition and object.

Now, the evidence will show that at no time in his career had Meyers had anything to do with oil, oil drilling, [1d] oil leases or anything of that sort. He had never met, prior to December, 1933, the defendant William Broome. He had met in a casual way within the immediately preceding year, the defendants Simons and Markowitz, who were introduced to him by his friend and protege, the Deputy District Attorney of the City and County of Los Angeles, Milton Black.

* * * * *

The evidence in this case will show that the main offices, the transaction of all business, the main business, the home office, of these corporations, the Peoples Gas & Oil Company, the Peoples Gas & Oil Corporation, the Peoples Gas & Oil Development Company and Peoples Drillers, were all in Seattle. That is where all the business was transacted.

This case, for reasons which I think will appear during the course of the proceedings, was, nevertheless, brought in Tacoma. Despite that fact, ladies and gentlemen of the jury, we will, I think, be able to produce not only residents of Seattle, San Francisco, perhaps New York, but men of high standing, whom you will all recognize, in the city of Tacoma, who will testify that they have known H. Harry Meyers for many, many years; that they are acquainted with his character and his reputation in the community wherein he has resided, and that he had always borne the highest personal reputation, both for truth and veracity and as a law-abiding citizen.

Now, the first time Harry Meyers ever heard of Bill Broome was just shortly before Christmas in the year 1933, when a prominent business man from Schenectady, New York, William Shirley, who knew Harry Meyers, met Bill Broome, whom he had known in his home town of Schenectady, New York; and Mr. Shirley called Harry Meyers on the [1e] telephone and said "There is a man whom I know, Bill Broome, who has a proposition involving a test of the state of Washington for oil, that I think is very attractive, and I wish that you would grant him an audience and listen to his story."

Dr. Meyers said, "Why, I am not interested in oil."

"Well," he said, "as a personal favor to me, I would appreciate it if you would meet Bill Broome and give him an audience."

So Harry Meyers granted Bill Broome an interview; and Bill Broome came down with a big portfolio and with geological data and all sorts of information about this Frenchman Hills anticline, as he described it. And Bill told Doc. Meyers how this group of leases, covering approximately 135,000 acres of oil leases on this property near Ephrata in eastern Washington had been gathered together through the joint efforts of Mr. W. Gale Matthews, who had for many years been a respected resident of that community and who had an abstract business there, a man who, incidentally, until a few years ago, was the Grand Master of Masons of the state of Washington. Now, they had got together this lease arrangement, and he explained how, in his opinion, based on the long study that Bill Broome had made

of it, and on the lifetime study that W. Gale Matthews had made of it, they were convinced that there was a tremendous possibility of getting oil there.

Mr. Broome in his talk with Harry Meyers pointed out that somewhat to the south in the Rattlesnake Hills area, where they likewise had a group of leases that were in escrow and that that would be delivered upon the same terms, merely upon the starting of drilling there was [1f] commercial gas production. And Bill Broome explained these geological reports and opinions and told how he had been down in Los Angeles trying to enlist the development and the testing of this structure by major oil companies. I don't recall off hand which ones they were, but I think Union and perhaps Standard, and they had put him off, put him off. His own funds were almost exhausted and he was finally told by somebody who took a friendly interest in him, Bill Broome, that those companies were not interested in making exploration or development in the state of Washington; that the state of Washington was one of the prize markets for gas and oil from California, and they had no interest in developing a competing production up here; and, further, that as a matter of fact, under the proration situation in California, they were not allowed to produce even the full amount of the oil from their existing fields, and they certainly were not interested in and would do nothing towards developing new fields up here. And this man told Bill Broome, "You are just wasting your time pursuing these major oil companies. The only thing you can do is to find some private individual who

will go along with you. And Broome told Harry Meyers that he had got a man, a man named McKim Hollins, an oil man of long and successful experience, to agree to go up with him, Bill, and advance the money to make this test; and, as they believed, to bring in the production of oil in the state of Washington.

Something had happened to McKim Hollins, who was a wealthy man, as Bill related it to Meyers, something had happened the last minute, an unfortunate financial reverse, and he, McKim Hollins, was unable to go forward with this venture. And Broome said, "I am on my uppers. I am about [1g] to lose all the money that I have expended in this proposition, and unless somebody comes to my rescue very soon, all of my efforts will go for naught; because in order to keep these basic underlying leases I have to start drilling within a certain length of time"; and that time was rapidly approaching.

As I recall it, the testimony will show that at that time Bill Broome had already,—counsel stated this I think somewhat differently, and I think he is mistaken,—I may be. But Bill Broome had already started drilling that property with what was, to be sure, scarcely more than a deep water-well rig; but he had started the drilling long before he ever saw Doc Meyers, but now, in order to validate those leases it was essential that he go to work with a proper rig and really start drilling the structure.

Well, the evidence will show that Doc Meyers advanced money to him and gave him the money with which to protect the money in those leases. At that time Doc Meyers did not anticipate that he would

personally go into the situation at all; but he did, through the intervention of Milton Black, whom I mentioned earlier, turn Broome over, put Broome in touch with Bill Markowitz and Jim Simons, friends of Milton Black, who had had a considerable experience in selling real estate, developing subdivisions and that sort of thing; and Milton Black had suggested that he thought that Simons and Markowitz might be interested in going in with Bill Broome to form a company to do this work.

And that time or shortly thereafter,—there were a lot of negotiations,—it was,—and there isn't any dispute about this,—suggested that wouldn't Doc put in just a little money, ten, twenty or thirty thousand dollars, for [1h] just a little piece of this, it not being contemplated at that time that he would do anything about it, just as a speculation of his own. And he considered that and I think there was some sort of a preliminary agreement drawn up along that line, so that Doc Meyers would ride along with these other men on the deal.

But, in the course of these discussions the thought was suggested by somebody and it took root with Doc Meyers, that if an organization with which he was associated could be successful in bringing oil into the state of Washington, that there would be the background for a perfectly irresistible force behind this Cascade Tunnel project, in which he was primarily interested. And as a result of that thought and the discussion of it back and forth it was finally agreed between Markowitz and Simons and Broome and Doc Meyers that Markowitz and Simons were to buy these

leases and that they were to sell them, and the money for it, of course, was to belong to them.

On the other hand, Mr. Broome and Harry Meyers would form the development corporation, and that corporation would make a thorough test of this structure by drill, and that Doc Meyers would advance whatever money was necessary to test that structure.

Now, in fairness I ought to say at this point that all of the evidence that Broome presented to Meyers indicated that the cost of drilling a complete test drilling on that structure would probably be around \$125,000.00, and that the outside estimate was \$175,000.00. Now, with the \$60,000 that they got from the leases, that would mean that Doc Meyers would be required to put up just a little in excess of \$150,000 which he was delighted to gamble, in view of his major project. [1i]

I want to say to you further that before they arrived at this conclusion, Meyers did make an intensive and extensive investigation of the situation. After his first couple of talks with Broome he came to the state of Washington. He went to see Gale Matthews. He had geological opinions about that Frenchman Hills-Rattlesnake area, and he came to the city of Seattle and went into the matter. In the first place he wrote a letter to John P. Hartman. Now, he had known John Hartman for a good many years on account of their association in this Cascade Tunnel situation; in which they were both jointly interested. John P. Hartman, as some of you may know, is a lawyer who has been practicing at this bar for—He was a member of the Tacoma

bar more than 50 years ago, a man of the highest reputation, one of the founders, along with Samuel Hill, of the Washington Good Roads Association, and Harry Meyers first wrote John P. Hartman and asked him if he thought there was anything to this, and he got back a very enthusiastic letter, which we will submit in evidence; and pursuant to that he came up here. He made the investigation that I have just described, and he decided that he would go into it.

Now, that is how Harry Meyers got into the Development Company.

Now, as far as the corporate changes are concerned, the fact that there were originally two corporations, the Peoples Gas & Oil Corporation that owned the leases and the Peoples Gas & Oil that sold them, and that these two were subsequently merged, the fact that originally the sales were on a lease basis, which they had a right to do, and in most cases did transfer those leases to the Development Company under a plan of community development; the fact that at a further and later date there were other changes [1j] in the corporate structure of the Development Company and Doc Meyers and Broome formed the Development Company, and that company became a public company, rather than a closely-held private company as it was before, I want to say this in general: That everyone of those steps, our evidence will show was a proper, a legal and desirable business change that was carried out

as a result of the experience that the operation showed was necessary.

None of these men had had any experience in oil, other than Bill Broome, and they were starting this as though it was an ordinary business venture, and they found as they went along that certain changes were necessary, and those changes were made. In general, I want to say to you that our evidence will show, I think, not only by a clear preponderance, but beyond any peradventure of a doubt, that those business changes in corporate structure were proper and that they were all made as a result of consultation with outstanding firms of attorneys, whom, if you were citizens of Seattle, you would recognize as being just that.

Now, with reference to the suggestions, as counsel stated in his opening statement, that the minutes of the Development Company, in a later period of this activity were dictated by John Simons, that is false. As a matter of fact, we will bring to you the lawyer of the company who actually dictated those minutes. It is true, ladies and gentlemen, and our evidence will so show, that in the first instance when these companies were engaged in what was obviously a totally coordinated enterprise, the three companies were represented by one well-known law firm, the law firm of Hartman & Hartman in Seattle. There was no conflict in interest between them, and there was no reason why one firm of lawyers shouldn't represent all of them. [1k] Later, when there was a distinction, when the Peoples Gas & Oil Company

became the public company and the public was interested, there was a separation. The Peoples Gas & Oil Development Company was represented by the firm of Hartman & Hartman; the Peoples Drillers was represented by the firm of McDonald, Harris, Carkeek & Coryell, the senior member of which, Judge Donald A. McDonald, is now on the Superior Bench of the state of Washington for King County; and the third of the companies which had now resulted from the merger of the first two, the Peoples Gas & Oil Company and the Peoples Gas & Oil Corporation was now called the Peoples Gas & Oil Company and was represented by the firm of Eggerman & Rosling. And these contracts that were drawn between those companies in 1937 had the benefits of the independent legal advice of those law firms, and they were in all respects legal and proper and just to the investors who put their money into them. The arrangement was right. That I will develop a little more; but what I want you to know is that those corporate changes were all, to cover them with a broad statement, were proper in point of law and were suggested by the business experience that resulted from the development of the project.

For instance, the merger of the Peoples Gas & Oil Company and the Peoples Gas & Oil Corporation was designed as a matter of tax savings, to cut the taxes in half, and there wasn't any reason, it developed, for the duplication of taxation. The stockholders of the two corporations were precisely the

same, and there wasn't any reason or necessity for corporate elaboration under the circumstances, as they developed. And I will point out to you a little later these other matters.

I want to say now, however, that with reference to [11] the changes of the books, to which counsel has referred in his opening statement, the books and records I think of one or two of these companies, the Peoples Gas & Oil Company and the Peoples Gas & Oil Corporation, the testimony of the Government's own witnesses on the last trial, and I don't believe it will be changed, was to this effect: Item one, Mr. Munkres, who was the bookkeeper, and Mr. Whittle, a certified public accountant, who had general charge, testified that as to the records of those companies, they were directed by Mr. Simons and Mr. Markowitz that those were their personal matters and they were not to disclose any of those things to Dr. H. Harry Meyers nor to Bill Broome, and that neither Broome nor Meyers had any knowledge about them.

Further, the testimony uncontradicted of the Government's witnesses will show that the changes which were made were made in the ordinary fashion as routine changes to make the books reflect the actual situation. They had been set up by somebody who was not a thorough accountant and was not competent in his work, and that these changes were merely changes which merely as a matter of bookkeeping and accounting were required in order to make the books properly show what the facts were.

Now, in this arrangement between the Peoples Gas & Oil Company and the Peoples Gas & Oil Development Company,—and I don't think the distinction between the Peoples Gas & Oil Corporation on the one hand is material for any purpose that I know anything about, and you can just say that as the situation was after the merger, that on the one hand you have the Peoples Gas & Oil Company and on the other hand the Development Company. Now, on the one hand the Peoples Gas & Oil Company belonged primarily to Mr. Simons and William [1m] Markowitz, together with certain associates of theirs. That company owned, acquiring them from Bill Broome and Harry Meyers, these leases and they sold them. And any purchaser of a lease had the right to keep it. He could keep it and if oil was discovered he could take his chance if it was discovered near enough to him so that he would get some appreciation in value. On the other hand he had the right and an option to turn it in to the Development Company for participation in the development of the company. That is to say, he had a community interest right. If, you see, he hung onto his own leases he wouldn't get any actual return unless the well was brought in on his own lease. He might get an appreciation in price by reason of the fact that oil was found in the community, in the neighborhood. But, if he desired to, he had the right to turn in, to assign, this lease to the Development Company, and the Development Company would give him a community interest. Then if the Development Company brought in a well he would have the right to participate in

the royalties or the profits of the Development Company.

Now, at a latter date,—This was in '34 and '35 and '36 I think,—the lease sales terminated, as counsel told you in his opening statement I think in April or May, 1936. There wasn't a single lease sold after that time.

Now, the Government contends that we never intended to carry out the representations that they made that they were going to complete the drilling program on this property. But the fact is, and the Government's own testimony will show, that from early in the year 1934, when the machinery got on the job there, just as rapidly as it could be done, drilling started and from the time it started, except in instances where they encountered a necessary and unavoidable [In] delay by reason of mechanical break-downs or what is called a "fishing job" on a well, that drilling continued after the sale of leases, —long after the sale of leases; and it was done, not on an eight-hour shift, but three eight-hour shifts, or towers as they are called in drilling oil wells. Three eight-hour shifts per day daily from the time it was started until the first indictment in this case was returned.

When the indictment in this case was returned in October, 1937, the evidence will show without contradiction there had been no sale of leases for eighteen months prior to that time, and yet this drilling had continued without interruption throughout that period.

And counsel made reference to a receivership. When this indictment was returned against the officers of the company, of course there was a situation where they couldn't very well continue to operate, and so, not on the ground of lack of funds, not on the ground of insolvency. On the contrary the Peoples Gas & Oil Development Company at that time did not owe a dime to anybody except to Simon and Markowitz; but on the ground of preserving the property and the equipment and keeping the thing moving, the Superior Court of the state of Washington for Thurston County, at the request of the department of securities of the state of Washington appointed a receiver, Mr. Donnelly, a former Attorney General of Washington, to continue the operation. And Mr. Donnelly did continue those operations until after the return of the indictment for many months thereafter, and he continued it, ladies and gentlemen, with precisely the same operating group that had been employed by the officers of the company when they were directing the affairs of the company, and with the same sales organization, and he continued to sell the participations that the [10] Development Company at that time, which was long after the withdrawal of Doc Meyers from the active picture, and the receiver continued to sell, pursuant to the orders of the Superior Court of the State of Washington those participations to the citizens of the state of Washington on practically the same representations that had been made by the company, with this exception, that instead of selling them at the price that the company had sold them at,

shortly after the appointment of the receiver, pursuant to the order of the Superior Court of the state of Washington, on the ground of the better showing, the more propitious showing, as a result of his operations, the price was increased, as I recall it, \$2.50 per participation, the receiver selling under orders of the court the same thing that these men were indicted for, upon the same representations, the same crew offering them, under order of the court, the receiver was directed to raise the price there of.

	*	*	*	*	*
*	*	*	*	*	*

These people filed affidavits to the effect that they and each of them were told at the time they purchased the leases on Frenchman Hills that it involved definite speculation; that they were told that if they could not afford to gamble, to keep their money in their pockets; that they were informed at the time they purchased that none of the money received by the Peoples Gas & Oil Company through their sale of leases was being used for the purpose of drilling; and that, on the other hand, the drilling of Donny Boy No. 1 was being financed by H. Harry Meyers; that they were told that the Peoples Gas & Oil Company and the Peoples Gas & Oil Development Company were two separate and distinct companies, the first selling leases and the second developing the property; that they voluntarily executed the assignment [1p] agreement with the Peoples Gas & Oil Development Company agreeing to turn their leases over to the company in return for a participating interest in their community plan of develop-

ment of Frenchman Hills, under the terms and conditions of which they would be entitled to receive their prorata of 65% of the net returns, if and when production should successfully be established on Frenchman Hills; and that the above-mentioned community plan was entirely confined to Frenchman Hills, and that no misrepresentations of any nature were made to them at the time of their purchase or at any time thereafter by anyone; that they had absolute confidence in the integrity of the Peoples Gas & Oil Company and the Peoples Gas & Oil Development Company. Six thousand such affidavits.

* * * * *

Our evidence will show further, I think it is admitted, the Government's evidence will show without contradiction that the drilling equipment that was put on this Frenchman Hills structure was the best, most expensive and best drilling equipment that had ever been put, to anybody's knowledge, on what is called a "wild-cat" location. And by that is meant merely an unproved field, a field where there was no record of oil production. This equipment was the finest that had ever been put on a "wild-cat" location, and it was *continuously operation*, as I have told you.

Now, with reference to the profits, the Government's evidence, I think, will show, as well as our own, that nobody of the many defendants in this case profited as a result of this enterprise; but particularly H. Harry Meyers got only I think some-thing like \$5,000.00 reimbursement, partial reim-

bursement of some expenses, from any of these companies. And, on the other hand, he actually advanced [1q] for the drilling, out of his own pocket, something over \$200,000.00. And in reference to the total profits or total sales prices which counsel referred to in his opening statement, something he said, I think around \$1,900.00, the evidence will show that in the first place the salesmen got a commission of 25%, which accounts for \$500,000.00, roughly. There was actually expended on drilling in the Frenchman Hills area in excess of \$500,000.00. As for that the evidence will show that while it had been represented to D. Meyers, and he believed and everybody believed that the basalt cap on that structure was not to exceed 2,000 feet in thickness, and this basalt is the hardest, toughest substance known in nature, other than a diamond, the drilling on this job went down almost a mile, and that basalt was penetrated to the deepest extent that basalt had ever been pierced in the history of drilling up to that time; and when the drilling stopped they were not yet through the basalt.

Now, there has been talk about geological opinions. The testimony will show, ladies and gentlemen, that Dwight C. Roberts, George H. Dunn, Stone and Ward B. Blodgett, who are mentioned in the indictment, were each and every one employed at some time or other by this corporation to give their opinion about the drilling, about the site and about the property.

The Government at the last trial held, and I assume they will have at this trial, Professor Weaver

from the University of Washington who gave it as his opinion, and there are other opinions to the same effect, that there isn't a possibility of gas or oil over there.

On the other hand, I think we will be able to obtain,—I hope we will,—he was here the last time, [1r] the attendance of Mr. Foran. Mr. Foran was a student of Mr. Weaver in the University of Washington and later was his boss on an actual job. Mr. Foran went to Iraq for the Standard Oil Company and was employed as superintendent of drilling. At the time of the prior trial in this court room he was present in this court, and he will, if we can get him, testify that in a situation much like that and under a burden of basalt, where the Government experts said there couldn't be gas and oil, he produced for the Standard Oil Company of New Jersey the best wells of oil that that company had found; and by reason of his success had been granted a furlough which enabled him to return to this country. And he will tell you that in his opinion the best thing that could be done to develop the natural resources of this country would be to complete that Frenchman Hills hole to determine whether or not there is gas and oil there; and he will tell you that the only way in the world to find out is to pierce it and determine, because nobody can tell in advance, other than by a guess, what is under a burden of basalt like that.

Finally, I want to say to you that the evidence in this case will show that the things that Dr. Meyers insisted on in connection with the sale of oil leases

by the Peoples Gas & Oil Company were first that no greater amount than 20 acres—I think that should be 5 acres should be sold to any one person; that none should be sold to a person who could not afford to lose the money; that everybody should be told that nobody could tell what was under that structure over there; that the only thing was certain was that if you only invested, “took a flyer” for 5 acres you couldn’t be hurt more than the amount you put in; and that if you couldn’t afford to lose it, keep your money in your pocket and wish them well. [1s]

And he insisted that every person should be distinctly told that this was not an investment, but a speculation; and he finally said that he was interested for himself in having the sales restricted to residents of the state of Washington for the reason that what he was trying to accomplish was the confidence of thousands that would back him up his main project of the Cascade Tunnel.

Now, when you have heard all the evidence in this case, I hope you will find that these propositions that I have told you are borne out.

We have to make an opening statement either now or when we put on our case. I have made it now in order that you might follow the testimony of the Government’s witnesses as they appear with our theory in mind, hoping that you will keep your minds open until we have an opportunity to tell you from the witness chair what the facts are as we contend. [1t]

Thereupon, the following proceedings were had and testimony taken, to wit:

Mr. Hile offered in evidence the following documents:

Plaintiff's Exhibit 1—Authenticated copy of Articles of Corporation of Peoples Gas and Oil Corporation.

Plaintiff's Exhibit 2—Authenticated copy of Articles of Corporation of Peoples Gas and Oil Company.

Plaintiff's Exhibit 3—Copy of Merger Agreement of Peoples Gas and Oil Corporation, with Peoples Gas and Oil Company.

Plaintiff's Exhibit 4—Authenticated copy of Articles of Corporation of Peoples Gas and Oil Development Company.

Plaintiff's Exhibit 5—Certified copy of the amended Articles of Corporation of the Peoples Gas and Oil Development Company.

Plaintiff's Exhibit 6—Certified copy of the Articles of Corporation of the Peoples Drillers', Inc.

Plaintiff's Exhibit 7—Submarked A to Y-1 inclusive, being letters used in the course of business of Peoples Gas and Oil Company. [2]

Said Exhibits were duly admitted as evidence and marked as above indicated.

Plaintiff's Exhibit 8—Tentative preliminary set-up for a Washington Gas and Oil Company, and a Washington Gas and Oil Enterprise was thereupon admitted in evidence, and read to the Jury by Mr. Hile, being:

PLAINTIFF'S EXHIBIT No. 8

"EXHIBIT A"

The following is a Tentative Preliminary Set-up for the operation of the sale and development of theGas and Oil Company of Washington.

The most feasible plan, on the first blush, is to form Three Corporations, a holding corporation, hereafter known as "No. 1", a sales corporation, "No. 2" and a development corporation, "No. 3".

ONE

This Corporation should take all the leases which are now held and convert them under a new form of community lease, so as to be consistent with the sales plans we have discussed. The present holdings should be supplemented by additional acreage until the holdings should comprise at least 500,000 acres. The new lease form should provide for the taking on of additional holdings, which will automatically become a part of the original holdings, in effect. When we say "Community Lease", we mean community, both as to land owner and No. 1. This lease will be known as "Unit A". No. 1 should also have another community lease, comprised of at least 50,000 acres, and to be known as "Unit B". Unit A will be offered in 10 acre leases, at the sale price of \$50.00 per lease. Unit B will also be offered in 10 acre leases, at \$200.00 per lease. Unit B will also be a community lease, but, which in turn [2a] should participate in Unit A, so that Unit B holders will virtually have a community interest in both. Unit

A holders will be confined to Unit A alone. Unit B should also be set up with those holdings which show geographically the best formation. In offering Unit B we should make a provision of any Unit A holder to turn in a Unit A lease, at the then prevailing selling price of Unit A, to be applied on the purchase price of the lease in Unit B.

A special provision should be made in Unit A, to the effect that any additional holdings added to Unit A should be on the same basis, and all leases in Unit A shall participate in any earnings, in the proportion that the lease may be, compared to the entire amount of holdings in Unit A, as and when distributions of earnings are made.

No. 1 will enter into an exclusive contract with No. 2, providing for the sale and distribution of all the holdings of No. 1, on the basis of 60% of the selling price to No. 2 and 40% to No. 1. No. 2 to maintain all their own operation cost.

Out of the 40% due No. 1 out of the Sales Agency, No. 1 will agree in the contract with No. 3, to advance to them, an amount not to exceed 62½% of what they receive. Said advance to be returned by No. 3 to No. 1 in the event of commercial production and earnings, on the basis of 50% of No. 3's surplus, after they shall have sufficiently financed all of their development as set up by Mr. Broome in his original program of development to establish a thorough test of the holdings.

37½% of what they receive should be retained by No. 1 for the purpose of conducting their own operations, such as acquiring new holdings, etc.

No. 1 and No. 3 should be headed by, and be under the personal supervision of Mr. [2b] Broome. No. 1 should be a limited corporation, with only one class of no par, common stock, with a permit to issue immediately 16 shares at a nominal price. This stock should be issued to The Atkins Corporation, Mr. Roth, Mr. Meyers and Mr. Broome, or their assigns, in the proportion of six, three, three and four shares respectively.

The main office of No. 1 should be in Seattle, Washington. It is obvious, that the most important thing to be accomplished in No. 1, is to create an advisory board composed of a number of representative local people.

It will be necessary in the conduct of the deal, to realize finances to carry on the work until it shall be self sustaining through sales. This financing shall be arranged by loans to No. 2, which shall be evidenced by their corporate note to the party making such advances, with the understanding that all such notes are to be retired in full, with interest, before any division of any profits to stock holders.

The main purpose of No. 1 will be to procure as much publicity as possible, together with material of every nature that might further the civic interest, as well as supply the selling organization with ammunition.

The Chart showing distribution and operation generally, is attached hereto; also a Chart showing the stock structure.

TWO

No. 2 should have the same general stock structure as No. 1, with stock issued in the same proportions, and to the same entities.

This company should be in direct charge of the Atkins Corporation, or its agents. Its operation should be strictly one of "Sales". In order to obtain the best results, No. 2 should work in close harmony with No. 1, [2c] and with No. 3 particularly, so as to gage its activities in keeping with the progress of the development of No. 3.

No. 2 should operate out of the main offices in Seattle, and in all likelihood, with branch offices in Spokane, Tacoma, Everett, Yakima and Bellingham, which would serve a total population of about 650,000 people.

No. 2 proposes to offer assignments and leases in Unit A at \$50.00 which will be sold on installments contracts, with \$2.00 as the down payment, and payments of \$2.00 weekly on each parcel, so that no contract shall run over 6 months, and no interest. Every client will be limited to a maximum of 4 leases.

Unit B is to be sold at \$200.00 per lease, on the basis of 25% down payment, and the balance in equal weekly payments not to exceed one year, and no interest. Every client will be limited to a maximum of 4 leases.

In case of a sale in Unit B to a holder of Unit A, we will permit a credit at the rate of the then prevailing price for any lease in Unit A, on any purchase in Unit B, with the provision that only one lease in Unit A can be exchanged on a lease in

Unit B. In all cases there should be a discount of 10% allowed for cash, or for full payment on any balance due of 50% or more of the total contract.

It is proposed to pay a commission, \$12.00, on each 10 acre lease in Unit A, as follows: the original \$2.00 payment to be retained by the salesman, together with a further commission of \$10.00 paid the Saturday following the verification of contract together with the first collection subsequent to the down payment. (It is our policy, wherever possible, upon verification, to place every contract on a monthly basis so as to collect \$8.00 in advance in each [2d] case, and which would then make it necessary to advance only \$2.00 on each contract as commission.)

On Unit B, a commission of 25% will be paid on all money consideration. The salesman shall receive the 25% down payment as his commission. In the event he does not receive a full down payment, he shall receive 2/3 of the down payment, and 50% of each subsequent payment, until a total of 25% of the net cash sale shall have been paid to the salesman.

CONTRACT

The contract proposed to be used by No. 2 shall be a general form for leases, but should be a short form with reference made to the original community lease, and should contain certain specific conditions to cover this particular deal, among which shall be a provision that leases are subject to a land owner's royalty of 12% of production, 15% to No. 1, 7½% to No. 3, and 65% to the assignor. There

should also be a provision that when the contract shall have been paid in full, assignor agrees to pay an additional fee of \$5.00 for transferring assignment, recordation, etc., also that in the distribution of profits from production, No. 1 shall have the right to retain 33-1/3% of all production, for the purpose of advance to No. 3 for further development. When No. 3 shall have fully reimbursed No. 1 for all advances, and shall have completed their development program, they shall then cease to receive any more of the returns from production other than the 7 1/2% heretofore mentioned. That, if, as and when there shall be production, No. 1 shall appoint some bank or trust company in Seattle, as trustees, for the holding of funds and for the purpose of distributing returns monthly to assignors. [2e]

The sales program should be a very intensive one, using every means of publicity by newspaper, radio and otherwise, such as enlisting the support of as many civic organizations as possible. It is understood that the success of the sales program will depend primarily upon man-power. However, it is reasonable to understand that we will have to rely as much upon the use of public officials and representative names who will be connected in some advisory capacity with No. 1 and No. 3.

The distribution and operation of No. 2 is noted on chart attached hereto.

It is proposed to make the keynote of this sales program one of Speculation, and we intend to stress the speculative side of these sales.

THREE

No. 3 shall have the same corporate structure as No. 1 and No. 2, with the exception, that stock ownership, I think, should be owned by agents of the three entities interested, and will of course be in the same proportion as the other holdings. No. 3 should be under the direct management of Mr. Broome. The operation of this company is a very essential part of our program, as they will have to constantly keep a development program going, consistent with the sales department. Their purpose is to create as much public interest as possible, and to supply No. 2 with all selling material possible, and should work very closely with the management of No. 2 for obvious reasons. No. 3 will be financed by advances from No. 1, to the extent of 25% of gross sales, which financing will be in the nature of an advance only. In addition to this, the [2f] company shall receive $7\frac{1}{2}\%$ of all returns as a result of production. Chart showing distribution in percentages is attached hereto.

Approved:

THE ATKINS CORP.

By /s/ W. MARKOWITZ, Pres.

/s/ H. HARRY MEYERS

/s/ LOUIS ROTH

/s/ DR. B. BLANK

/s/ WILLIAM A. BROOME

Thereupon testimony was taken as follows: [2g]

FRANCES BUCKLEY PHELAN,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live on Vashon Island, Washington. I was employed by the Peoples Gas & Oil Company from April 7, 1934 to July 3, 1936 as stenographer and secretary. I was first employed by J. F. Simons.

Plaintiff's Exhibits 9, 9-A, 9-B and 9-C are lists of master leases which Mr. Simons gave me to copy. I made copies of them and gave them to Mr. Simons. Later I used them to check against them when lease contracts were sold.

Plaintiff's 9, 9-A, 9-B and 9-C were admitted in evidence without objection.

Government Exhibits 10-A, 10-B, 10-C, 10-D, 10-E, and 10-F are forms of lease contracts and assignments and completed leases used by the Peoples Gas & Oil Company in selling leases to the public.

After a lease contract (10-A) had been filled out and signed by an executive it was mailed back to the purchaser, together with an assignment from (10-B) to be signed and returned to the office by the purchaser. These documents were mailed out together with a copy of the "Northwest Gas and Oil World" until after the fall of 1934 when the number became too great and the "Northwest Gas and Oil World" was sent out by addressograph under a postal permit. Later the company published its own paper the "Peoples Progress" and mailed it out to all the

(Testimony of Frances Buckley Phelan.)

purchasers. The "Peoples Progress" was mailed out by addressograph under a [3] postal permit.

Mr. Simons signed the contracts for the Peoples Gas & Oil Company and Mr. Broome signed the assignments. Later Mr. Robbins signed the leases and I signed completed assignments of gas and oil leases as secretary.

At first Mr. Broome kept these documents, but later he turned them over to Mr. Simons. They, the assignments, were kept under the name of Peoples Gas & Oil Corporation. They were used by all three companies.

Government Exhibits 10-A to 10-F inclusive were all offered and admitted without objection, merely to show the form of documents employed in the sale of leases by the Peoples Gas & Oil Company.

Plaintiff's Exhibit 11, Minutes of People's Gas & Oil Corporation was admitted without objection on assurance by government counsel that it was in the same condition as when last seen by defendant's counsel.

Likewise Exhibit 12, Minutes of Peoples Gas & Oil Company was admitted without objection and likewise No. 13, Minutes of Peoples Gas & Oil Development Company and No. 14, Minutes of Peoples Drillers Inc.

I first met defendant Meyers about April 10 or 11, 1934 in the Olympic Hotel in Seattle. Mr. Simons introduced me and left and I conversed or visited with Dr. Meyers.

(Testimony of Frances Buckley Phelan.)

I was anxious to listen to Helen Rubenstein, who was talking over the radio at that time and asked Mr. Meyers if he had any objection to my turning on the radio to hear her. He said "Not at all," and said he knew her and had met her in his travels in Europe. Then the conversation drifted along and he mentioned other people of world prominence he had known. [4]

When in Europe, he said he had sold a medical formula or something that he had originated himself. As I remember it he said he had sold it for a million dollars. He went on to say that he had lived in New York and in a number of places in Europe, that he had a chauffeur who had been with him for a number of years because he had paid him very well. I made the remark, "Well you have come quite a long way since that time". He replied, "Oh, yes I have come quite a long way." I said, "Well you have made quite a bit of money then since that time". He said, "Yes, I consider myself worth well over fifteen million dollars today."

He said his wife lived in California and that they commuted between Los Angeles and Seattle. He also said that he owned what I think he called Lake Arrowhead Villa. That his two boys had been developing and selling the property at Lake Arrowhead Villa and he owned some other development in California, but which I just do not remember where it was. He said he was in Seattle to interest the people of the State of Washington in gas and oil and

(Testimony of Frances Buckley Phelan.)

was also up to have a survey or try to interest somebody in a survey of the Cascade Tunnel.

Q. Did he make any mention of the "two boys"? You said his "two boys".

A. Yes, he mentioned his two boys and further enlarged on that to the effect that his two boys were Billy and Jimmy. I said, "Well, you mean——"

Mr. Johnson: I object to that.

The Court: Objection overruled. Exception allowed.

Mr. Johnson: Exception.

Q. (Mr. Hile): Proceed. And he said what with reference to Billy and Jimmy?

A. He said his boys, Billy and Jimmy. Of course [5] I didn't know whether they were sons or not. He said, "Well, I will explain Billie and Jimmy," he says, "I will call them 'my boys', that is Billie Markowitz and Jimmy Simons."

Q. Any further conversation? Anything further said at that time by the defendant that you now recall?

A. Well, right at this moment I can't quite remember all the things that were said.

Q. Do you recall anything about the Golden Gate Bridge being mentioned?

A. Oh, yes, that is right. He said that he was the president of the Strauss Engineering Company, and he told me that he was building the San Francisco Golden Gate Bridge.

Q. Was anything mentioned about Mr. Broome?

A. Oh, yes. He mentioned that he had met Mr.

(Testimony of Frances Buckley Phelan.)

Broome; Mr. Broome was referred to him by somebody. I didn't quite understand the name of the person he referred to who had referred Mr. Broome to him, but he said Mr. Broome had come to him sometime around Christmas time or something like that, and they sat and talked until three or four o'clock in the morning, as I remember he said. It was Christmas morning and Mr. Broome and his family were in very straightened circumstances, and that he had given Mr. Broome some money to go out and get breakfast with or something. I don't remember now just what it was, but something to that effect.

Q. Anything further about that that you recall?

A. You mean with regard to Dr. Meyers' conversation with me?

Q. Yes.

A. Well, I could only state what Mr. Broome had said later. [6]

Q. No, anything that Mr. Meyers may have said about——

A. (Interrupting): Oh, yes. He said that after Mr. Broome had been—they talked until three or four o'clock in the morning, as I remember it, and then he said that he didn't get in touch with Mr. Broome right away, that he said he had sent his own geologist up to Washington and Jimmy and Billie and himself came up to Seattle to look over the situation here before he could give Mr. Broome any work. Then after he got back to California

(Testimony of Frances Buckley Phelan.)

he said he got in touch with Mr. Broome; that he was coming up to Washington; that he was very much interested in the State of Washington; and that he wanted to make the people of the State of Washington oil conscious.

When I was first employed on April 7, 1934 we didn't have any office. We had quarters in a suite in the Olympic Hotel. In that suite was Dr. Meyers and Mr. Simons as I understood it. Mr. Broome happened to be in the office at the time. Mr. Dwight Hartman was there as I remember. There was somebody else in the other room that I did not see or know who he was.

The first work that I did in typing the master list was done in 306 Burke Building in the office of Hartman & Hartman. After that I would come up to the hotel to take dictation and take it to my room to type. On April 13, 1934 offices were opened at 410 4th & Pike Building.

Q. All right. And at 410 Fourth & Pike Building, who was quartered there?

A. The Peoples Gas & Oil Company, the Peoples Gas & Oil Corporation and Peoples Gas & Oil Development Company.

Q. And what individuals had offices there? [7]

A. In the beginning, Mr. J. F. Simons and Mr. William A. Broome had the original offices together in part of it, and there was an office there for—Mr. Samuel Markowitz had an office there. He was supposed to represent the Peoples Gas & Oil Corporation as Vice-President.

(Testimony of Frances Buckley Phelan.)

Q. And what other persons were quartered there? Either then or later, as the case may be.

A. Well, later on William Markowitz had his office there and Dr. Meyers had an office in the same suite.

Q. Were the offices at 410 Fourth & Pike Building continued throughout the balance of the time you were there?

A. The entire time I was there, although when they first opened up their offices there it went just down the side of the hall and then later it took up practically—at least one half of the entire floor.

Q. And while at the early part,—what were the sales operations of the company, the first sales operations, or attempted operation, so far as you know?

A. When they first opened offices they advertised for salesmen, sales people; and different individuals came in answer to the newspaper advertisements. When they came in they were given while cards approximately 3x—Well, they would be approximately 4x8 inches long with more or less of a questionnaire typed, about 8 or 10 questions. And they had these questions on there, and the people were to go out to the different sections of the city—the city was divided into different areas, and these people went out there and would ask them questions that were printed on these cards.

Then they would bring them into the office and after the office was opened,—Oh, very shortly after the office was opened, they had what I called the

(Testimony of Frances Buckley Phelan.)

telephone room, [8] where they had eight or ten telephones with men that they had hired to call up the peoples whose names were on these cards, who signed the cards; and they would call up these people and discuss or ask questions about what they answered on the cards.

Q. And how long was the telephone room in operation?

A. I would say two or three weeks, possibly. Maybe a month. I don't know, but it wasn't a great length of time.

Q. It was then discontinued? A. Yes.

Q. And then what was the next sales operation, so far as you know?

A. Then they had the—Mr. Simons wrote to California to ask them to send up salesmen from California.

Q. And did such salesmen arrive?

A. Yes. They arrived very shortly after.

Q. Who? Do you recall?

A. Well, I can remember the names of some of them: Mr. Sterns, Mr. Komm, Mr. Shapiro, Mr. Tope, Robkins, Mr. Goldner and—I don't remember—I can't remember the names of all of them, but those were some of those that came up first.

Q. And how long did they remain?

A. Well, some of them remained continuously or straight on. Some of them stayed up possibly two or three weeks and then would go back to California, and then perhaps come back again. They would have them coming up all the time. [9]

(Testimony of Frances Buckley Phelan.)

I took dictation from Mr. Simons and Mr. Broome. I also took some dictation, not very much, from Dr. Meyers, Mr. Markowitz and others in the office.

Q. And in the course of that dictation, do you recall whether or not any of the defendants made any statements either by way of conversation or dictation relative to money for any equipment?

A. Yes. Mr. Simons in a letter to Mr. Roth in California mentioned, or told Mr. Roth to get hold of another man and have him hurry up and send \$5,000.00. One man had already sent \$5,000.00 and one or two who had not sent their sums of money, and asked them too—asked Mr. Roth to get hold of the others and have them send up each \$5,000.00.

Q. Was anything said about the purpose of the money?

A. There was drilling equipment that they were to need right away. I think the first time that he had written them prior to July 10, and the next time was July 10, because they were leaving on July 17th for Colorado to buy drilling equipment.

Q. Was that '34?

A. 1934.

There was something said regarding drilling equipment in the conversation with Dr. Meyers in the Olympia Hotel in April, 1934. He happened to mention that he was very well acquainted with one of the principals of the Teapot Dome Drilling and that they were going to buy the Teapot Dome Drilling equipment.

(Testimony of Frances Buckley Phelan.)

Q. Now in the course of your employment did you have occasion to have anything at all to do with the minute books of any of the three corporations, that is the Peoples [10] Gas & Oil Corporation, or the Peoples Gas & Oil Development Company or the Peoples Gas & Oil Company?

A. Yes; from the time I—well, not exactly at the time I started, out shortly after the time I started, Mr. Simons dictated minutes of all three corporations to me, and after I had typed them I was asked to put them in the minute books, which I did.

Q. That is Mr. J. F. Simons?

A. Mr. J. F. Simons, yes.

Q. That is the Simons you have been referring to, is it, Mrs. Phelan? A. Yes.

Q. And did you do so? Did you type them and put them into the minute books?

A. I typed what was dictated to me, and I put them in three books, the Peoples Gas & Oil Company, Peoples Gas & Oil Corporation and Peoples Gas & Oil Development Company.

Q. And over what period of time were the minutes of these three companies dictated to you by Mr. J. F. Simons?

A. From the start—from the time shortly after I started to work for them in April, 1934, until some time in October, and it would probably be the latter part of October as I remember.

I do not know definitely whether Mr. Simons dictated all of the minutes. He did dictate minutes

(Testimony of Frances Buckley Phelan.)

of all three corporations. I do not remember anyone else dictating minutes to me. I don't remember having taken any dictation from any lawyer.

In plaintiff's Exhibit 11, minutes of the Peoples [11] Gas & Oil Corporation for April 16, there are some minutes dictated to me. However, this is not my typing. Minutes were dictated to me for that date, but these are not the minutes that were so dictated. I did type out the minutes that were dictated to me and placed them in the books of all the three corporations. The minutes for April 16 that I referred to is on the page marked in red ink, page 48. My name is signed here. However, I never type my name on the line on which I sign.

On page 53 in this book I notice that my name is spelled "Buckely", which is not the way I spell my name. Those minutes are not my typing. I remember minutes having been dictated to me and the names that appear were dictated.

On page 66 and 67 that information was also dictated to me, but that is not my typing.

Mr. Simons dictated minutes to me from April, 1934 until October of that year. Under date of June 19, 1935 my name is signed as secretary of the corporation. I resigned as secretary on April 26, 1935 and I don't remember ever having been re-elected as secretary or member of the Board of Directors. That is not my typing. There is nothing in here after April, 1935 that I would have had anything to do with. I did attend one meeting at which I was elected secretary and member of the

(Testimony of Frances Buckley Phelan.)

Board of Directors, but no more of the Peoples Gas & Oil Corporation.

Respecting Government Exhibit 12, Peoples Gas & Oil Company minutes, I remember such minutes at page 49 being dictated to me, but that is not my typing. That extends to pages 49, 50 and 51. I inserted minutes that were dictated to me, and which I typed, one in each individual book. I had nothing to do with anything after October. [12]

With reference to Exhibit No. 13, minutes of the Peoples Gas and Oil Development Company, I note minutes for April 20. I remember writing minutes for that day, but it has been changed. I had the name R. N. Zeitland. It has been changed to R. M. Mr. Zeitland was a member of the Atkins Corporation in Los Angeles.

I remember having taken dictation for the minutes of April 27, 1934, page 65, but this is not my typing.

On page 92 of this exhibit I recognize the signature of Dr. H. Harry Meyers.

On page 93 I recognize the signature of William A. Broome.

On page 52 of Exhibit No. 11 I recognize the two signatures of S. Markowitz. I also recognize the signature of J. F. Simons.

With reference to my signature in exhibit No. 11, in minutes not typed by me, I recall that the Peoples Gas and Oil Corporation was supposed to be discontinuing and there were a number of different documents which I was called into the office of Mr. William Markowitz to sign in May or June, 1935. There were three copies and they told me

(Testimony of Frances Buckley Phelan.)

they were in triplicate. There were present William Markowitz, J. F. Simons, H. R. Munkers, Mr. Whittle, Dr. Meyers and Dwight Hartman. They asked me to sign all these documents as secretary of the Peoples Gas and Oil Corporation. I asked if I might not read them. They said they did not have time for me to read them so I just signed my name on each of these different documents as I was requested to do, without reading them. I never had an opportunity to read them.

Mr. Simons in dictating a letter to me to somebody in California said "Washington is hot. Send up some of your prima donnas." I thought he was talking about opera [13] singers or something and he said "Well, maybe I better explain this to you." He said the people they had in Seattle who were called "green horns" he called "bird dogs", next there was "Cox's Army", or regular salesmen, then the "prima donnas" who were, as he explained it, high-pressure salesmen.

On page 81 of plaintiffs Exhibit 11 I recognize the signatures of W. Markowitz, S. Markowitz and my own signature.

Cross Examination

By Mr. Simon:

My name at the time I was employed by the Peoples Gas & Oil Company was Miss Buckley.

In the first conversation I had with H. Harry Meyers I remember his saying "my boys" and not "the boys". I thought possibly they were his sons

(Testimony of Frances Buckley Phelan.)

when he first spoke of them. I would not say that it was impossible that he might have said "the boys" meaning Jim and Bill, rather than "my boys" but I would state the fact that I got the impression that they were his sons from the statement "my boys". I don't remember of very often having heard the expression "the boys" for Jim Simons and Bill Markowitz. I don't remember having heard that expression "the boys" referring to Jim Simons and Bill Markowitz. As far as I know they were quite close friends. I would say that they were not young. They were not old. They were in their late thirties probably.

Mr. Meyers did, the first time I talked with him, tell me that he was worth fifteen million dollars and was President of the Strauss Engineering Company and owned Lake Arrowhead and had these places in Long Island and Los Angeles. [14]

I never at any time had any feeling of resentment toward William Markowitz and Jim Simons and do not now have any such feeling against any of these people mentioned. I had no thrill of satisfaction of finding that Jim Simons and William Markowitz had been convicted.

I never had any trouble with anybody in the office except Mr. K. E. Emmerson. I was not discharged. I resigned as of July 3, 1936. I did not even hear that I was discharged until I heard it here before.

That is my signature on the defendant's A-1. I

(Testimony of Frances Buckley Phelan.)

remember writing the letter to Mr. Gale Matthews and mailing it to him.

I don't recall ever having taken any dictation from Mr. Dwight Hartman. When Mr. Simons dedicated the minutes on page 48 of the Peoples Gas & Oil Corporation I do not know whether he was reading to me from penciled notes or type-written documents on his desk, "My nose was in my book and not on what he was *dictation* from."

As I remember, Mr. Meyers, when I first met him, did not say that he was an engineer. He said he was up here in Seattle from California to have a survey made of the Cascade Tunnel. He didn't state to me that the man he was talking about was the President of the Washington State Tunnel Association.

After I left the employ of the Peoples Gas & Oil Company I went to work for Mr. Kenneth C. Davis. I had known Mr. Davis when he was going through school and noticed that he was attorney for several radio stations in Seattle, and I thought possibly there would be an opportunity for employment in one of the radio stations. However, when I went into his office and he asked me if I was working and I said no he said "All right, you are hired." I did not [15] know that he was handling any kind of a case at that time. I found shortly afterwards that he was attorney for Mrs. Dickason in her suit against the companies for the appointment of a receiver. I have seen Mr. Swenson in

(Testimony of Frances Buckley Phelan.)

Mr. Davis' office on one or two, or possibly three occasions that I remember. I answered all of Mr. Davis' questions in reference to the companies and made arrangements for certain other people to have conferences with Mr. Davis during the time that the Dickason suit was pending.

Re-Direct Examination

By Mr. Hile:

As I mentioned before, I left because of difficulty with Mr. K. E. Emerson. At that time he was office manager. There was constant friction between us from the time he was so employed. A day or two before the letter to Mr. Matthews he had come to me and had been very nasty in regard to my signing as secretary of the corporation. So I wrote the letter because of the fact that I had to sign all of these assignments that were sent over to Mr. Matthews for the corporation. I signed that as secretary. They were still recording the leases so I had to sign as secretary of the corporation and sent them over to him. Mr. Matthews had written a letter, which was really personal to me, that had come into Mr. Emerson's hands and he came to me in a very nasty way which I resented and therefore wrote this letter to Mr. Matthews. I never at any time had any difficulty with defendant Meyers, or J. F. Simons, or William Markowitz, or Sam Markowitz, or Pat Robkins, or Roth, or any of them.

At the time of writing minutes of the Peoples Gas & Oil Corporation for April 16, 1934, Exhibit

(Testimony of Frances Buckley Phelan.)

No. 11, my name was Miss Buckley. At that time I think S. Markowitz was Vice-President. I believe he was a brother of William Markowitz. These minutes were not typed by me, but I do recall that something similar to that was dictated to [16] me. I do not remember anything in the minutes dictated to me, about a \$65,000.00 consideration. I don't remember that sum of money at all at any time. The typing found in Exhibit No. 13, minutes of the Peoples Gas & Oil Development Company for September 7, 1934 is not mine. I remember that I was dictated notes on such a meeting. I don't remember at any time any such sum as \$65,000.00 mentioned to me. I recognize the signature of William A. Broome and S. A. Munkres. Mr. Munkres at that time was bookkeeper. I think at first he was office manager and also acted as secretary of one of the corporations. [17]

GALE MATTHEWS:

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live at Ephrata, Grant County, Washington. I am abstractor of land titles. I did have occasion to gather together approximately 135,000 acres of oil leases. I started early in 1919 and carried on for several years, keeping the leases intact.

(Testimony of Gale Matthews.)

Later I had occasion to assign these leases over to William A. Broome. He had in no way aided in gathering the leases which I assigned to him. There was no money consideration paid by him or by anyone else for the assignment of these leases to Mr. Broome, but the consideration was the reservation of an over-riding royalty on the leases and in case there was production I had a share in the production. There was an obligation on the part of Mr. Broome to drill. The assignment provided, if I remember correctly, that the structure was not to be considered fully developed until there had been drilled as many wells as there were 40-acre tracts in the leases assigned.

Cross Examination

By Mr. Simon:

I believe my original assignment to Mr. Broome was early in 1932. It might have been as late as early 1933.

Mr. Broome was obliged, by his agreement, to commence drilling a well within a certain time in order to keep the terms of the escrow. He did start drilling. I cannot state exactly when, but I know it was not within the specified time required and I granted him considerable leeway, but he must have started either late in 1932 or early in 1933.

[18]

I had a conversation with H. Harry Meyers in Seattle when I met him by introduction of Dwight Hartman, about drilling in the spring of 1934. Mr. Broome first came in 1931 and he had been tending

(Testimony of Gale Matthews.)

to details connected with the leases for a year or more before I ever met Dr. Meyers. Before Meyers entry into the situation I had instituted some court proceedings to cancel the escrow agreement with Mr. Broome on the ground that he had not continuously kept the drilling going under the terms of the lease.

I had spent many months in getting together a lease structure. I had accumulated a great many geological reports on the structure. These I showed to Mr. Broome. I had commenced gathering geological reports in 1919 and they were made at various dates by various geologists, and as to their contents they were largely theoretical as such reports must be in an area that has not been drilled. Some were sanguine in their belief. Some were bad, said there was little chance of production. I did give Mr. Broome copies of this information.

I believe I showed this data to H. Harry Meyers and told him of my interest in the development of this section where I had lived for fifty-two years, and the possibility of finding oil. I wanted to sell the idea. I believed in it.

The leases were of value if drilling was in progress and for my efforts in securing them and placing them in escrow I was to receive an average over-ride of 2%.

Re-Direct Examination

By Mr. Hile:

Mr. Broome started to drill in 1933 and went down about 135 feet, although I am not certain as

(Testimony of Gale Matthews.)

to the depth. It cost Broome about \$8.00 a foot. Broome sent the money to me and I paid it out.

[19]

H. R. MUNKRES,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

My name is H. R. Munkres. I was employed by the three different Peoples Gas & Oil Companies from about April 9, 1934 to sometime in October, 1937. My duties were those of bookkeeper, accountant and office manager, and I kept the books of all the three companies.

I had in my possession at different times the minute books of the Peoples Gas & Oil Companies and of the Peoples Drillers, Exhibit No. 14.

I kept the books of the companies from April, 1934 until the date of the receivership in 1937, with the exception of about three or four months in 1934 when I was away.

My immediate superiors in connection with the books were J. F. Simons and William Markowitz, also Mr. Whittle, a Certified Public Accountant in Seattle, who was employed regularly to make tax returns. He did that and some other work in the books and after a period he came back and was around most of the time. I received instructions

(Testimony of H. R. Munkres.)

from Mr. Whittle many times and I verified instructions received from him by Mr. Simons and Mr. Markowitz as to whether I should follow his instructions. What Mr. Whittle had to say about the books was done. Exhibits 15, 16, and 17 are certificate books of the Peoples Gas & Oil Company and the Peoples Gas & Oil Corporation. No. 18 is a stock certificate book of the Peoples Gas & Oil Development Company. No. 19 is the stock certificate book of the Peoples Drillers, Incorporated. [20]

Thereupon Plaintiff's Exhibits 15, 16, 17, 18 and 19 were offered and admitted in evidence without objection.

These stock books were kept in the office of the joint and several companies at 410 Fourth & Pike Building at Seattle. They were all in the same suite of offices.

For my services I was paid part of the time by the Peoples Gas & Oil Company and part of the time by the Peoples Gas and Oil Development Company. I could not state the date of the change, but it must have been about November, 1936 that the change was made from the former to the latter.

Q. Calling your attention to plaintiff's exhibit No. 11 admitted in evidence, pages 48, 49 and 50, I will ask you to examine those pages and state whether or not you have ever seen them before, sir?

I first saw pages 48, 49 and 50 of exhibit 11, about April of May, 1935 in Mr. Whittle's possession. I saw Mr. Whittle take out the original minutes and insert these pages in their place in the

(Testimony of H. R. Munkres.)

book. I have never seen the original minutes since that time.

I saw pages 65, 66, 67, 68, 69, 70, 71, and 72 of Exhibit No. 13, minutes of the development company, about the latter part of April or the first of May, 1935, in Mr. Whittle's possession. Mr. Whittle inserted them in this place in the minute book at that time. He removed the original pages and I have not seen them since.

Pages 74 and 75 of Exhibit 12, minutes of Peoples Gas & Oil Company I first saw in the office of the Peoples Gas & Oil Company about April of May, 1935 in Mr. Whittle's possession. He inserted them in the book in this place. He took out the original minutes and I have not seen them since. [21]

In Exhibit No. 15, the stock book of the People's Gas & Oil Corporation the first four certificates were originally in the book. No. 5 was not the original certificate No. 5 in the book. The original was taken out by me and given to Mr. Whittle on his instructions. It was left out and delivered to William Markowitz. The certificate and stub which now purport to be No. 5 I placed in the book. I made out the stub.

No. 6 stub and certificate in the same book are not the original No. 6, and No. 7 is not the original. These originals were taken out by me and given to Mr. Whittle at his instructions. The originals were given to Mr. William Markowitz and I last saw them on his desk.

(Testimony of H. R. Munkres.)

In Exhibit 17, being the certificate book of the Peoples Gas & Oil Company the first four certificates are the originals. Numbers 5 to 8 inclusive are not originals. The originals were taken out by me and given to Mr. Whittle on Mr. Whittle's instructions. I have not seen those originals since that time. The stubs that are now 5 to 8 inclusive were made up by me.

In Exhibit 18, stock book of the Peoples Gas & Oil Development Company the first four certificates are the originals. Nos. 5 and 6 were not originally in the book. I removed them and gave them to Mr. Whittle at his instructions.

With respect to all of these certificates that were removed from the certificate books the only time I saw them since they were removed was about that time and I saw them on Mr. William Markowitz's desk. The stubs in each case now in the certificate books were made out by me and substituted for the originals. [22]

Originally there were issued in each of the three companies, Peoples Gas & Oil Company, and the Peoples Gas & Oil Corporation and the Peoples Gas and Oil Development Company, 112 shares to J. F. Simons, 112 to the Atkins Corporation, 56 each to Blank and Lou Roth, 112 to H. H. Meyers and 32 to M. M. Black. Those were represented by the certificates which were removed. They were issued as transfers from the first four original certificates.

In Government Exhibit No. 13, minute book of the Peoples Gas & Oil Development Company, with

(Testimony of H. R. Munkres.)

respect to the minutes now appearing on pages 65 to 72 inclusive, the originals contain nothing about a \$65,000.00 note. The original minutes contain an agreement under which the Peoples Gas & Oil Company was to advance to the Development Company up to 62½% of their receipts from their portion of the sale of gas and oil leases. That is not shown in the minutes as they now exist.

I had several conversations with defendant J. F. Simons concerning such contract. That was possibly in May or June, 1934. In discussing the tax situation Mr. Simons said the Peoples Gas & Oil Company was to advance up to 62½% of their receipts from the sale of gas and oil leases to the Development Company for development purposes. [23]

MILTON S. HURWITZ,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

I live at Los Angeles. In 1934, 1935 and 1936 I lived in Seattle. I was editor of the Northwest Oil and Gas World, which also had the name of Washington Oil World. I was a member and secretary of the Northwest Oil and Gas Association.

I met William A. Broome, I think, about 1932. Defendant Meyers I met in 1934 together with J. F. Simons and William Markowitz at the Olympic Hotel in Seattle at the instance of John P. Hart-

(Testimony of Milton S. Hurwitz.)

man, who explained that these men had come up from California interested in oil and gas development and wished to learn what cooperation they could get from our association. I assured them that we were very much interested in any development up here and felt sure our association would welcome them.

I cannot recall definitely what defendant Meyers said. Mr. Markowitz said that they were particularly interested in Frenchman Hills, but also generally in development throughout the state, with a wide-spread program in view, that they had an option on Broome's property on Frenchman Hills, and that they were not going to sell any stock, but would sell some leases to develop a following and an oil consciousness in the state. Markowitz said a minimum of 60% of the proceeds would go into drilling development.

Mr. Markowitz wanted me to get a letter of welcome from our association and our board convened the next day and prepared such a letter. Government's Exhibit No. 21 contains on the third page a copy of the letter. I saw [24] Exhibit No. 21, or one substantially like it many times in the offices of the Peoples Gas & Oil Company. I first saw it in dummy form in the rooms at the hotel occupied by Markowitz and Simons.

Thereupon Plaintiff's Exhibit No. 21 was admitted in evidence without objection.

An arrangement was made by Mr. Simons with

(Testimony of Milton S. Hurwitz.)

me for a circulation of the Northwest Oil and Gas World among the lease purchasers. Under that arrangement they later bought varying numbers of the paper at a flat amount per copy, ranging from 500 to 15,000 copies.

I had a number of conversations with defendant Meyers, but nothing specific that I can recall. He told me that he had been interested in developing a product called Denver Mud, that he had taken to England, and that he was interested in the construction of the Golden Gate Bridge and in various natural resource projects.

I suspended my arrangements with the Peoples Gas & Oil Company in October, 1935 because I disagreed with their policy and felt that I could no longer lend my efforts to their project. I discussed that aspect of it with Mr. J. F. Simons a number of times prior to October, 1935.

Plaintiff's Exhibit No. 22 is an article written in part by me and published in the "Commerce & Industry Magazine" for November, 1934. The article is headed "Washington Makes Bid for Slice of Nation's Oil Business". I got the information from Mr. Simons, Mr. Markowitz and Mr. Hartman. I cannot swear that Mr. Meyers was present at these conversations. [25]

Cross-Examination

By Mr. Simon:

I had nothing to do with the preparation of plaintiff's exhibit 21, but it contains a number of

(Testimony of Milton S. Hurwitz.)

quotations from the Washington Oil World, of which I am the editor. I knew some of the geologists mentioned in the excerpts. I never met Dr. Marcell R. Daley, but knew of his writings regarding oil prospects in the State of Washington, as quoted in Exhibit 21, and likewise regarding other quotations. The quotations from the Washington Oil World used in Exhibit 21 are correct.

The Commerce and Industry magazine, I believe was published in New York. I wrote this article at the request of Mr. Simons. H. Harry Meyers never said he was an expert in gas or oil or a geologist.

Re-direct Examination

By Mr. Hile:

The various portions from my publication appearing in Exhibit No. 21 were not complete articles. They are excerpts. The one written by me and signed Sidney Milton was written, I would say, about 1931 or 1932. The Washington Oil World was published during the years 1930 or 1931.

The resolution of the Northwest Gas and Oil Association appearing in Exhibit No. 21 was later rescinded. Plaintiff's Exhibit No. 23 is a photostatic copy of a letter sent to Peoples Gas & Oil Company and the Peoples Gas & Oil Development Company rescinding the resolution. The name Luther Weden at the end of it was signed by me on his authority. He was chairman of the committee. I signed his name because he could not wait and he authorized me to sign it.

(Testimony of Milton S. Hurwitz.)

Mr. Hile: I offer this in evidence, your Honor.

Mr. Simon: We object to it as incompetent. [26]

Mr. Hile: I might state that the original of that is in the Court's custody, and I could substitute the original if it is necessary.

The Court: I don't understand the objection is based on the fact that it is not the original.

Mr. Hile: I don't understand that he did.

Mr. Simon: Not at all. I am not raising that question, your Honor.

Q. (By the Court): When did you say that the resolution was rescinded?

A. I believe it was in November, 1935 or 1936.

The Court: This letter bears date March 17, 1936.

A. Then it was March. I don't remember.

The Court: 1936.

A. Six or seven years ago.

Mr. Simon: I call your Honor's attention to the fact that admittedly, according to counsel's opening statement, the lease sales had terminated at the time this letter was written.

Mr. Hile: Is that dated March, your Honor?

Mr. Simon: Yes, March, 1936.

Mr. Hile: April 15, is the date the sales stopped.

The Court: It will be admitted in evidence. Exception allowed.

Photostatic copy of the letter admitted in evidence and marked Plaintiff's Exhibit 23.

(Testimony of Milton S. Hurwitz.)

PLAINTIFF'S EXHIBIT 23

Northwest Oil and Gas Association
312-313 McDowell Building
Seattle, Washington
Phone Eliot 8363

March 17, 1936

Peoples Gas and Oil Development Co.
Peoples Gas and Oil Co.
Seattle, Wash.:

Gentlemen:

You are herewith notified that the Executive Committee of this Association has been instructed to withdraw its resolution of March 19, 1934 offering cooperation to the Peoples Gas and Oil Development Co.

At the time this resolution was adopted our committee was given to understand and pledges were made thereto that your companies had a legitimate program looking to the development of the petroleum resources of this state. It has become obvious, through the repeated misrepresentations made by your agents, and by the malicious practices of your officials, that your conduct here is not in accord with the ethics of honest administration required by this association, nor with the spirit of cooperation in which it is organized.

Your immediate return of the letter conveying the resolution is requested, and you are herewith formally notified that its use in any sales literature or campaign is forbidden, and that proper steps

(Testimony of Milton S. Hurwitz.)

will be taken to enforce these instructions, should you not willingly accede.

Yours very truly,

NORTHWEST OIL AND GAS
ASSOCIATION

LUTHER WEEDIN

Luther Weedin, Chairman
Executive Committee

LW ET

[Endorsed]: Filed Oct. 8, 1942.

I did talk with defendant Meyers as to what would happen to the drilling if the lease campaign should cease or be a failure. That was at our first meeting. He told me they were going to engage in the sale of leases, and I suggested that possibly they might not find sale of leases so easy here as in other areas, that the people of Washington were not oil conscious and might not buy [27] leases. I was assured by Dr. Meyers that the well would be drilled even if it took his own funds.

Re-cross Examination

By Mr. Simon:

I had not become involved in a dispute with Mr. J. F. Simons nor with Mr. Markowitz about sums claimed to be owing me. About the time of March 17, 1936 I composed the letter of March 17, and signed Mr. Weden's name. I did not submit the form of the letter to him before sending it, but we had discussed it previously. [29]

TYLER A. ROGERS,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I have been an engineer all my life. My present occupation is being in charge of an exploratory well which we have been drilling for the past nine years at Wenatchee, Washington.

I know the defendant Meyers and I did know defendants, J. F. Simons and William Markowitz.

I first met Defendant Meyers on the 19th day of March, 1934 in a suite of rooms in the Olympic Hotel in Seattle. I was director of the Northwest Gas and Oil Association and was called over to meet Dr. Meyers and the other men mentioned. Other directors of the association were present. Of the defendants, Dr. Meyers, Jim Simons and Mr. Markowitz were present. We were called to this meeting as directors of the association apparently to obtain our approval or endorsement of their proposed operations.

Dr. Meyers was introduced and he seemed to be the spokesman of the party. He said that Broome had met him in California and told him he had a vast block of acreage under lease in Washington and was seeking financial aid. That Broome had interested him to the extent of coming up here and conferring with the Hartmans, who in turn recommended calling our association together for conference. Dr. Meyers represented that he could not

(Testimony of Tyler A. Rogers.)

personally give his time to it; that the terms of a contract he had with an engineering firm of Strauss & Meyers, who were build- [30] ing the San Francisco Bridge prevented him from associating himself actively with any other project. He then introduced Mr. Simons and Mr. Markowitz whom he sponsored as financial agents that could handle the promotion end of his program.

After a proposal was made by Dr. Meyers someone referred to me as the one from the east side of the mountain closest to their proposed operations and perhaps more directly interested. I took the floor and addressed Dr. Meyers and told him briefly the purpose of our association; that it was in fact the clearing house organized by our state geologist and other men concerning themselves in legitimate efforts to develop oil in our state, and that our chief purpose was to discriminate between legitimate and illegitimate efforts, that a lot of money had been taken from the public and wasted in our state with no developments completed yet. I told him that if their intention was to come into the state and make an intelligent, legitimate development and they were not connected with any major oil company, as far as I was personally concerned all I could say was that I would endorse their project. Later we went into conference and adopted the resolution.

Dr. Meyers answered me and said their intentions were to drill wells here, that if they undertook it they would complete it if he personally had to do it. He assured me that there was no connection

(Testimony of Tyler A. Rogers.)

with any major oil company. Later I had a private conference with Dr. Meyers that afternoon. He suggested that I come back and talk with him. It was chiefly to tell me his plans. He said they proposed to drill a number of wells in our state and to help any worthy projects that might be under way. [31]

At the time of the meeting and resolution, which appears in Government's Exhibit No. 21, there was no mention made of selling leases. I had no knowledge of that until perhaps thirty days afterwards when they launched their lease selling campaign.

Cross Examination

By Mr. Simon:

Prior to that time I had heard of Mr. Broome through Gale Mathews who had assembled the acreage and turned it over to him. I doubt that I had ever met Mr. Broome.

I recall the letter I wrote to Mr. Broome, being defendant's Exhibit No. A-3.

Defendant's Exhibit A-3 was admitted in evidence.

I was present at the time the resolution was passed by the Northwest Gas and Oil Association. I was not present at a meeting which purported to rescind that resolution.

With reference to defendant's Exhibit A-3, I knew that Broome was working with Gale Matthews relative to the block of leases. Mr. Mathews gave me Mr. Broome's Los Angeles address when I

(Testimony of Tyler A. Rogers.)

wrote this letter. At that time I was having a geological investigation made by Mr. Lupton of Denver, Colorado. I wrote to Mr. Broome to get him interested in our project at Wenatchee.

Defendant's Exhibit A-4 offered and admitted.

We have seepages of live oil and they have existed since the day of the Indians. The seepage suggests to an engineer that the reservoir is filled and overflowing by the migration. Naturally if there is an oil seepage it has to have a source. The seepage of any kind of oil indicates that the structure is filled and that it is adjacent to or coming from *the* [32]

I know the seepages along the Columbia. I have visited them and so have our engineers. I have recently had a test made in the Government Laboratory in Wenatchee of the oil we have in the bottom of our well.

I do not think that I have ever failed to issue a bulletin once a week, giving the exact facts as to the depth of our well. It is posted in a number of prominent places in Wenatchee and a copy mailed to the Wenatchee Daily World. The facts have been before the people over there all the time. I do not find that it is hard to keep information from being distorted as to how far we are and what is being done.

I have visited the Donny Boy Well after becoming acquainted with Meyers, Broome, Markowitz and Simons. In fact, I saw the first well that Broome had when he was validating leases.

(Testimony of Tyler A. Rogers.)

I was there when they started their first well. I was there when they dedicated their rotary rig. I was over to the well on three or four occasions. The first equipment was a standard drilling rig with cable tools. When they started in on their main operation they had a very good cable tool outfit. The later rotary rig was very elaborate. I would say that it was the finest type of drilling equipment I had seen on that type of location, although I perhaps saw the equal to that rig at Aberdeen by the Ohio Oil Company a few years ago. That was an electric-driven rotary. This was a diesel-driven rotary. The Ohio Oil Company was a subsidiary of the Standard.

I have been educated by experience to recognize that the major oil companies of California have purposely discredited the oil possibilities of our Northwest. I have not seen as yet an honest intent by those companies to find oil up here. I believe we are all human enough [33] so that if we were sitting on the board of directors of one of the large oil companies of California with surplus oil, as in the past and were enjoying this Northwest market, we ourselves would perhaps be selfish enough to discourage any attempts at development up here to interfere with such a market.

Re-direct Examination

By Mr. Hile:

With reference to the map on Exhibit No. 21 I would say the oil seeps on our property are around this domal structure that we are drilling on and

(Testimony of Tyler A. Rogers.)

it is approximately 100 miles from there to the scene of operation on Frenchman Hills. We are about $21\frac{1}{2}$ miles south of Wenatchee by air line. The seeps are about 100 miles west of the well that they were drilling. I do not know of any seeps in the immediate area of Frenchman Hills. I have made a check of the country more particularly south of that in the Yakima district, but I did not find any true live oil seep until I got into the Wenatchee district. We have what we call "fool's gold" in a lot of places. It is an oxide of iron stain on water that looks like oil, but isn't.

The report of Charles T. Lupton had nothing in it in connection with the Frenchman Hills area. I accompanied Mr. Lupton on his reconnaissance survey and we did not take in the Frenchman Hills territory. He passed the comment on it that there was a structure there all right, but of course anyone can say no more than that. You can see a structure almost anywhere you look, but to find possibilities for oil requires more than superficial examination. I had negotiations with the defendants relative to becoming interested and developing our project. There was a conference in the offices of these companies in the Fourth [34] and Pike Building. Mr. Broome said they were willing to take over our company and give us a stock representation in some of their companies for what he had invested. They would make of that a separate project and put on a stock selling campaign and raise at least \$500,000.00; put a big outfit on to

(Testimony of Tyler A. Rogers.)

drill it. At that time I had only what is called a 27 Star Drilling Machine on it, which is a large sized water-well rig. Mr. Broome told me that he had conferred with their associates and that was their decision. I said "well Bill I am sorry but we are not interested in that proposal." So that was dismissed.

I know there were three holes started by the defendants on Frenchman's Hills beginning with Mr. Broome's hole there. Mr. Broome's first hole went down 125 or 130 feet. I have no definite knowledge as to how far the second well went.

When John B. Hartman introduced Mr. Meyers at the time the rotary rig was installed he eulogized him and said he was a nationally known character and deeply interested in the Northwest resource development. I believe he mentioned the Cascade Tunnel.

Re-cross Examination

By Mr. Simon:

To date we have drilled 4900 feet and our approximate cost has been \$160,000.00. If we had contracted the drilling out it would have cost us more. The usual rate of drilling, without the casing, is \$20.00 per foot for the first 2000 feet, \$30.00 per foot for the next 1000 feet, \$40.00 per foot for the next 1000 feet and \$50.00 per foot for the next 1000 feet. We, at Wenatchee, had to drill through only 49 feet of basalt. [35]

GEORGE A. SELLAR,

a witness called on behalf of the plaintiff after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live in Wenatchee, Washington and have lived there for twenty one years. I had occasion to become interested in drilling operation in Wenatchee and in that connection met Mr. J. F. Simons about May 18, 1934. Arrangements for the meeting were made by Mr. Gale Matthews.

Plaintiff's Exhibit No. 24 for identification is a letter I wrote to Mr. Simons in connection with our proposed visit to Seattle. Next is a letter from Simons to me in the same connection postponing the date. The third is a reply I made to Mr. Simons. The next and last is just a follow-up of the others.

As a result of the correspondence we had a meeting at Mr. Simon's office at Fourth and Pike Street, Seattle. Mr. Simons introduced me to William Markowitz. I explained the situation with respect to our drilling enterprise at Wenatchee. Mr. Simons said he would be interested in Wenatchee too. I said we want someone to drill our well. We had expended all the money we had. I asked if he had money enough to do these things. He said yes they had unlimited money. He said Dr. Meyers and Mr. Strauss were the financial backers.

Mr. Simons said down in California he had a big deal in operation, that this up here was just a

(Testimony of George A. Sellar.)

“piker” deal, that he had over fifty people at the office, that people down in California were investment minded and that in Washington he was going to make people oil minded. [36]

Regarding our Wenatchee proposition he said he would give us an acre of lease for a share of stock. I told him that I knew the land and that it was appraised from fifty cents to a dollar an acre and that we had received \$100.00 from every share of stock we sold. That we had no salaries and no over-riding expense, but were only a bunch of business men trying to put the hole down. Mr. Simons said that anybody that would sell stock for 20% is a “sucker”. He said they were selling leases, tangible property and had a 60% commission, paying their salesmen 20%. I said, “Well that cuts a dollar down to forty cents.” Further I said, “The whole thing don’t look right to me. It seems to me that if you could come in there with a guarantee that you would drill that well, I would give you my stock, all I have got for nothing, and I think I could get you the majority of the stock and hand it to you, if we had an iron-clad guarantee that you would complete that well. That is all we are after.” He said he could not think of anything like that. He said “You can take it back to your people.” I said “There is no use taking it back, but I will mention it to them when I get back, but I know they won’t listen to anything like that.” As a result of the conference no arrangement was consummated.

(Testimony of George A. Sellar.)

Q. And at the time Mr. Simons mentioned Meyers & Strauss, did he say in what business they were?

A. He said they were millionaires and had unlimited capital. He said, "We don't need any money to run this. We have got all the money to do it." He said they were the people that were running—were building the Golden Gate bridge at San Francisco. He said that Dr. Meyers was a financier, and Mr. Strauss was an eminent contractor and engineer. [37]

Plaintiff's Exhibit 24 consisting of letters identified by the witness admitted in evidence.

PLAINTIFF'S EXHIBIT No. 24

Sellar Realty Co.

[Letterhead]

May 7, 1934.

Mr. J. F. Simons,
Peoples Gas & Oil Co.
410 Fourth & Pike Building,
Seattle, Wash.

Dear Sir:—

I am the Vice President of the Wenatchee Valley Gas & Oil Company and we are drilling at Monitor as you probably know. Last Saturday a few of our folks called on Gale Matthews at Ephrata and talked over the situation and Gale said that he thought your company might be interested in some kind of a deal to take over our well and continue the drilling.

(Testimony of George A. Sellar.)

Mr. Matthews called you up on the telephone and said that you would like to have us call on you and talk the matter over.

We are ready to run over to Seattle at any time and the most convenient time for us would be Friday of this week. We would leave here in the morning and call on you after lunch, say about 1:30 o'clock.

Please advise me at once if this will be convenient for you and if so we will try to be over there at that time. We will bring maps and data and try to show you the whole picture and the prospects for a good well over here.

Yours very truly,

G. A. SELLAR.

[Written in pencil]: Stockholders Meeting
5/8/34 Also 5/25/34

[Endorsed]: Filed Oct. 8, 1942.

PLAINTIFF'S EXHIBIT No. 24-A

[Letterhead]

Peoples Gas and Oil Co.
Of Washington

May 8th, 1934.

Mr. G. A. Sellar,
33 S. Wenatchee Avenue,
Wenatchee, Washington.

My dear Mr. Sellar:

Replying to your letter of May 7th, I am going

(Testimony of George A. Sellar.)

to ask you to be so kind as to carry your appointment with me over until next week.

My associate Dr. Meyers left here last week for Los Angeles and it has thrown so much work on my shoulders that I am afraid I would not be able to give you and your associates the time I would like to give, therefore, if you will kindly make this appointment for a week from this Friday, May 18th, 1934 at 2:00 P.M., I shall be very happy to get together with you and your associates.

Thanking you for your kind indulgence and looking forward to the pleasure of meeting you in person, I am,

Sincerely yours,

PEOPLES GAS & OIL CO.

J. F. SIMONS

J. F. Simons - President

JFS:FB

[Endorsed]: Filed Oct. 8, 1942.

PLAINTIFF'S EXHIBIT No. 24-B

May 9, 1934

Mr. J. F. Simons,
Peoples Gas & Oil Co.
410 Fourth & Pike Building
Seattle, Washington.

Dear Mr. Simons:

I have your letter of the 8th requesting that we postpone our visit to Seattle until Friday, May the

(Testimony of George A. Sellar.)

18th, at which time we have an appointment with you at 2 P.M.

We will be very glad to do this and unless we hear from you to the contrary, we will call at your office at the time mentioned.

Yours very truly,

.....

G. A. Sellar

GAS:HLS

[Endorsed]: Filed Oct. 8, 1942.

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PLAINTIFF'S EXHIBIT No. 24-C

May 16, 1934

Mr. J. F. Simons
Peoples Gas & Oil Co.
410 Fourth & Pike Building
Seattle, Washington

Dear Mr. Simons:

This is to confirm our appointment at your office Friday May 18, at 2 P. M.

A couple of our officers of the oil well will be over at that time to see you as arranged.

Yours very truly,

.....

G. A. Sellar

GAS:HLS

[Endorsed]: Filed Oct. 8, 1942.

(Testimony of George A. Sellar.)

Cross Examination

By Mr. Simon:

I never did meet H. Harry Meyers. He was not present during any conversation and I never took up correspondence with him on these propositions.

[38]

RUFUS WOODS,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

I live at Wenatchee, Washington and I am publisher of the "Wenatchee World".

In August or September, 1934 I met defendant, J. F. Simons and William A. Broome. They came into the World office. They said they were going to put down a well for oil in Grant County. That a man by the name of Dr. Meyers was back of the deal and there would be no stock selling. They told me they wanted publicity. I asked them very definitely as to the sale of stock and they were very definite in saying there would be no sale of stock. That Meyers was a very wealthy man. As a result of that I took them to the News Department and asked the boys to give them a story. An article was then published in the paper.

Sometime later I met defendant Meyers in a suite of rooms at the Olympic Hotel in Seattle. Simons, Broome and Gale Matthews were present.

(Testimony of Rufus Woods.)

They brought Meyers into the big room from a side room.

Q. (By Mr. Hile): Go ahead, Mr. Woods.

A. And they said, "This is Dr. Meyers, who is the man back of this deal; over—going to put down the oil, going down for it." And in the course of the conversation, as they related it: Dr. Meyers here is the man that put over the San Francisco bridge, or the "big bridge at San Francisco", the words they used. He is not only going to put down this well, but he is going to put through this 30-mile tunnel through the Cascades. He is going to make a state out of this. [39]

Cross Examination

By Mr. Johnson:

There had been considerable talk about the Cascade Tunnel. There still is some. That program had been discussed for a number of years in Eastern Washington and throughout the state.

I did not stay very long in the hotel suite with Dr. Meyers. They called him "Dr. Meyers". [40]

MALCOLM P. CHRISTENSEN,

A witness called on behalf of the Government, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live at 8611 32d Avenue S.W. Seattle. At pres-

(Testimony of Malcolm P. Christensen.)

ent I am a shipfitter lead man in the Seattle-Tacoma Shipbuilding Corporation on Harbor Island, Seattle.

On September, 1934 to June 15, 1937 I was employed by the Peoples Gas & Oil Company first as salesman and from January 14, 1935 to April 15, 1936 as Sales Manager of the Tacoma Branch of the company.

I was first directed to the company by a help wanted newspaper ad and went to the company's office at 410 Fourth and Pike Building, Seattle. I met Bert Fisher, Sales Manager of the Sales Office and talked with him. I also met all of the defendants, J. F. Simons, William Markowitz, Dr. Meyers, Derby Markowitz and the others. Mr. Simons directed me to follow Mr. Fisher's orders explicitly in selling. He said Fisher was in charge of sales and his advice was the advice of the company.

I remember particularly one sales meeting in December, 1934 when Fisher, Simons, Broome and Dr. Meyers were present together with perhaps 55 to 60 salesmen.

Mr. Fisher first spoke at the meeting and said he was happy to have with us Dr. Harry Meyers for the first time for many of us and also that William A. Broome, President of the Development Company and Mr. Simons would speak. He read letters from prominent citizens of the State of Washington, one from Hartman & Hartman, another from L. L. Norton, former Chief of Police at Seattle, one [41] from Senator Lovejoy and several others. Mr.

(Testimony of Malcolm P. Christensen.)

Fisher said these letters recommended the man he was about to introduce. He then introduced Mr. Broome.

Mr. Broome said they were drilling 24 hours a day with the finest equipment that money could buy, costing in cash \$100,000.00 That he had great faith in the project, not only because of the geological staff of Ward, Blodgett & Rogers, but because of his old friend McKim Hollins, who had at one time promised a million dollars to drill the Frenchman Hill structure, but had run into income tax trouble with the government and Broome had been obliged to look elsewhere for support.

Mr. Broome said that some man in the Standard Oil Company had advised him to contact Dr. Harry Meyers, who had become interested in the deal on one condition that Mr. Simons and Mr. Markowitz could be interested in a public lease-selling program that would obtain for this new industry enough political support to enact laws for protection of the new program. He said that the deal had been consummated whereby Dr. Meyers would do the financing, backing up the program with plenty of money; that he was a man of great means, a millionaire who owned homes in San Francisco and New York and had guaranteed Mr. Broome to drill as far and as much as Mr. Broome and his advisers thought it wise to go. With that Mr. Broome introduced Dr. Meyers.

Dr. Meyers did not speak very long. He said that he did have homes in New York and San Fran-

(Testimony of Malcolm P. Christensen.)

cisco. He said that he was widely interested in Washington because his wife was a Tacoma girl and Washington was more or less his home. That he had wandered all over the world, but that Washington seemed to be home on that account. That probably Mr. Broome [42] *Mr. Broome* would not have been able to interest him enough to some up had it not been for that, but that on seeing the vast possibilities of the enterprise he had decided to finance it with his money. He also said that he was interested in the Cascade Tunnel and in due course he proposed to put that across if possible.

Thereafter Mr. Simons spoke, as I recall it. He assured Dr. Meyers that he would obtain the leaseholders to protect the new industry. He said that Dr. Meyers had asked him for 20,000 people, but to make his word doubly good he would obtain at least 25,000 people. He made that as a prediction on this particular morning at the salesmen's meeting.

The Golden Gate Bridge was mentioned. Mr. Fisher mentioned it first in his remarks. Mr. Broome also mentioned it. Broome said in introducing Dr. Meyers that Meyers was an associate of Mr. Strauss of the Strauss Engineering Company and had been largely responsible for the bond issue, which he said in the presence of Dr. Meyers and ourselves had carried by a 3 to 4 majority, a bond issue which made the bridge possible. There was nothing said at that time about any sum of \$65,000.00.

(Testimony of Malcolm P. Christensen.)

About four days after this meeting there was a public meeting at which Dr. Meyers and other defendants were present. That was at the Eagles Auditorium in Seattle. Mr. Simons, Dr. Meyers, Mr. Broome and Mr. Fisher spoke. There were about 400 present. *Their* statements by the speakers were exactly the same as at the previous salesmen's meeting of which I have spoken.

I talked personally with Dr. Meyers for two or three, or possibly five minutes after the sales meeting I first mentioned. There was no one else present. I made [43] the remark to him that the Golden Gate Bridge was certainly a stupendous undertaking and he said he had great pleasure working with that project and of being an associate of Mr. Straus in building this bridge. He told me briefly of the newspaper publicity he was able to obtain through one newspaper that finally put the bond issue over. I do not recall the name of the paper. In October, 1934 there was a sales meeting with Broome and Simons present. Mr. Fisher then said this oil deal on Frenchman Hills could mean a lot to everyone in the State of Washington, that the drilling operation would be carried to completion, that one hole might not bring in oil, but that other holes would be drilled; that Signal Hills in California, for example, had had six or seven holes drilled on it, the first ones finally leading to a well that did come in with great success.

I think Mr. Broome at this meeting spoke and

(Testimony of Malcolm P. Christensen.)

said that down in Texas a fellow by the name of Pat Joiner worked for ten years to bring in oil in the east Texas field, that the first hole came in dry and he begged, borrowed and almost stole in order to get enough money to drill the second hole, but when it came in it enriched all the investors.

Sales meetings were held in Seattle while I was salesman there three times a week, Mondays, Wednesdays and Saturdays with public meetings on Thursday night. Public meetings were held once a week in Seattle, Tacoma, Spokane, Yakima, Aberdeen, Vancouver, Olympia and Walla Walla. After the first of the year 1935 sales meetings were held every morning of the week in Seattle, Tacoma and Spokane until April 15, 1936. That is true also of [44] Yakima, Aberdeen and Vancouver. In Olympia and Walla Walla they were held only occasionally. Public meetings were addressed always by Mr. Broome and occasionally by Mr. Simons and Dr. Meyers; that is in the various towns I have mentioned and the same at the sales meetings. At the sales meetings also Mr. William Markowitz would speak. Markowitz was General Manager and Director of Sales. J. F. Simons was President of the Peoples Gas and Oil Company, the sales company. Meyers was Vice President of the Peoples Gas & Oil Development Company most of the period. Mr. Broome was generally president of the Peoples Gas & Oil Development Company. Mr. Markowitz told me in April, 1935 that the minimum amount to be paid on a lease contract was \$5.00 and \$5.00 per

(Testimony of Malcolm P. Christensen.)

month. Contracts were not to run beyond one year.

Exhibit 10-A was a contract to sell and assign. 10-B was the assignment and agreement, to make the purchaser of the specified acreage participator in the community lease. He bore an interest in relation to the number of acres his assignment and agreement called for as compared with the whole 135,000 acres.

When I sold a lease to a purchaser the description of the acreage was not filled in. We told the people who bought that the description would be filled in by the home office and that when a lease had been paid for, they would receive a deed for it which would be nullified because it would become a participating part of the whole community lease. In the beginning we left a copy of the lease with the purchaser at the time of sale, but not later. Purchasers were sent a copy from the home office. The description was filled in and then mailed to the purchaser. The second instrument was the assignment to [45] the Peoples Gas & Oil Development Company. In other words, the purchaser bought the lease and then assigned it to the developing company under the community plan.

Mr. Markowitz, on his first visit to the Tacoma office in April, 1935, instructed us to obtain an assignment and agreement in all cases. He pointed out that the lease would be of no value to the purchaser unless he became a part of the whole, and further it would not be a good policy to have acreage strung around where someone else might get to-

(Testimony of Malcolm P. Christensen.)

gether and come in and drill, so that was the instruction given to salesmen and with one exception was carried out in all of the 8,000 contracts obtained through the Tacoma office while I was manager there. A document similar to Exhibit 21 was first given to me by Mr. Fisher in the Seattle office, and they were available throughout the 14 months when I was in the Tacoma office and after the sales campaign ended. We were told to make this our Bible of instructions to salesmen, and salesmen were in turn instructed to use it as sales material entirely.

References to Rattlesnake Hills were made by Mr. Simons, Mr. Broome, Dr. Meyers, Mr. Fisher and Mr. Derby Markowitz.

Q. And what was said in connection with Rattlesnake Hills I don't want you to cover each individual meeting,—If I may, your Honor, to shorten this.

A. Mr. Broome stated at public meetings in December for one in 1934 in Seattle at the Eagles' Auditorium that we were very fortunate in having included in the vast acreage this particular acreage on Rattlesnake Hills because it was a proven gas area, and he said that he believed that the gas produced in the Rattlesnake Hills area was [46] seepage from the Frenchman Hills area in which they were drilling. In other words, he stated that the 135,000 acre structure was a great inclosed structure three times as big as the Toteko Ridge at Tampico, Mexico, with probably a great deal more basalt on it, but also more pressure under it; and that the Rattlesnake Hills area was without question, in the

(Testimony of Malcolm P. Christensen.)

minds of himself and his advisory geological staff seepages from under Frenchman Hills, but in the event that that, it should be that that opinion was wrong, the company felt gratified in knowing that they could always go and drill in Rattlesnake Hills.

Government Exhibit 26 was used by me and other salesmen in the campaign that came out in May, 1935.

Exhibit 27 came out in the summer of 1935. Number 28 was issued about November 1, 1935. "We used it in the Tacoma office."

Number 29 was issued just before Christmas, 1935 and we used it in the Tacoma office.

Number 30 came out in the latter weeks of 1935 or first weeks of 1936. I do not recall.

We used Government Exhibit No. 31. I cannot recall the date on this one. We used all of these.

Thereupon Government Exhibits 26 to 31 inclusive were admitted.

The first price raise was on December 26, 1934 when I was working out of the Seattle office. Instructions regarding the raise were discussed at the meeting I told about in December at which Dr. Meyers and the others were present. Mr. Broome at that meeting exhorted us to do better to get as many leases sold as possible because they were being sold way under their value. The price [47] at that time was \$62.50 for five acres or \$12.50 per acre. The price was going up to \$17.00 or \$87.50 for five acres on the 22nd. He said that with the gas they had found at 85 feet in the hole at Frenchman Hills, which had tested second only to the highest testing

(Testimony of Malcolm P. Christensen.)

butane gas ever found in the United States the price was ridiculously low and that we would be justified in going to our friends and telling them about this gas and getting them in at the lower price. He assured us that they would have the finest Christmas present they would ever have.

During the middle of 1935 the question of options came up and Mr. William Markowitz instructed us to include with each and every contract, whether or not the customer wanted it, an option which would give him an opportunity to receive acreage at the same price, in the event that oil was hit. He also pointed out that it was an added way to increase the business. An option holder could exercise his option up to a certain day after there had been a price raise.

Material furnished the salesmen included always a broadside such as I have identified, and letters which we were requested to copy and have them used in salesmen's kits. We were also sent newspaper clippings and later there was a form made up of mimeographed newspaper clippings taken from various newspapers of the state used in the salesmen's kits. Each salesman was furnished with a kit, which also included letters from prominent citizens. The Northwest Gas & Oil Journal, Commerce and Industry. I recognize Exhibit 22 as a copy of the article in Commerce and Industry which I referred to.

Government's Exhibit 32 was used as standard [48] sales equipment after it came out. I talked with Mr. James Simons about it about June, 1935 at a

(Testimony of Malcolm P. Christensen.)

sales meeting. He said he had done a great deal of work obtaining the publicity that he was now able to give us. That he thought it would be a great aid and he wanted us to know that he had worked very hard to get publicity. He held a copy of this exhibit in his hand as he spoke. It was distributed either shortly before or shortly afterwards and used by all of us throughout the sales campaign.

Government Exhibit 32, display sheet, was thereupon admitted in evidence.

Always when the price of leases was going up Mr. Markowitz would instruct us to take advantage of the options that had already been made and to contact our customers and let them buy at the lower price before it went up. In some cases they had a few days of grace afterwards. Exhibit No. 33 I saw in the possession of Marvin Scott, a salesman that originally had worked in Spokane, but later transferred over to the Tacoma office and worked for me for possibly six months, the last three months of 1935 and the first three of 1936. That exhibit was used in connection with the sale of leases with my approval as manager. He always presented it to me before he added any additional material. We were instructed by Mr. William Markowitz to take all of these newspaper clippings in their original form and use them. This particular exhibit came to the attention of defendant Mr. William Markowitz for one. Thereupon compilation of newspaper clippings was admitted in evidence.

Mr. Broome spoke of his geological experience at

(Testimony of Malcolm P. Christensen.)

meetings when defendant Meyers was present. One such occasion [49] was at a public meeting in Tacoma in the latter part of June or first part of July, 1935 at the Moose Temple. Mr. Broome then told us that he had had many years experience as a geologist, that he had spent four and half years putting together the Frenchman Hills structure. That he was qualified by his years of experience in California fields and also better qualified to know what was under the basalt in Frenchman Hills than anyone else. He spoke of his association with McKim Hollins in the oil business, and that he was very proud to have men associated with him, such as Doane, Blodgett and Roberts.

“Q. I will ask you if any reference was made at this day to the Tampico or to Teteco?

A. Yes. Teteco No. 1 at Tampico, Mexico. Mr. Broome explained that it came in for 150,000 barrels a day and flowed that way for one year. He stated that it was his firm belief, while it was a gamble and a speculation, that the possibilities of Frenchman Hills were probably three or four times greater because of the fact that it was three or four times larger; that the basalt was three or four times thicker, and that it would therefore hold three or four times as much pressure, comparing it to the Tampico field or the Teteco No. 1 at Tampico, Mexico. He stated that McKim Hollands had drilled through this basalt and had gotten through in 1700 feet to bring in this world's largest gusher. He stated, of course, that it may come in dry, but that

(Testimony of Malcolm P. Christensen.)

it was his belief that the pressure under Frenchman Hills was probably much greater than at Teteco No. 1 at Tampico, Mexico; and said that with men like Dr. Meyers backing the program, with enough money assured to be sure of the completion of the well, that people who wouldn't buy under those circumstances ought to have their heads examined."

Mr. Fisher would speak of Broome [50] as one of the best geologists in the United States, that without question we had in Mr. Broome a man who knew more about the oil business in Washington than any living man. He was a geologist and a petroleum engineer. Mr. Simons was present and Mr. Markowitz, and Dr. Meyers occasionally when Fisher made these statements.

I recognize the documents marked as Government Exhibit No. 34 as some of them written by me, some furnished by William Markowitz and copies by me, and all mailed to salesmen. I did this in the course of my activities as sales manager at Tacoma. The documents were all submitted to some of the defendants before being used.

Government Exhibit 34 admitted in evidence.

I recognize defendant's Exhibit 35 as copies of "Peoples Progress". I would call it the Peoples Gas & Oil Company's newspaper that was mailed to clients or customers throughout the State of Washington and used extensively as sales material.

Government's Exhibit 35 admitted in evidence.

A short time after I became a salesman I asked Mr. Simons some questions about the deal and how

(Testimony of Malcolm P. Christensen.)

it was going to work. That was early in September, 1934. Simons told me that 40% was going for promotion and 60% for development of Frenchman Hills. We talked about the men behind the deal, Dr. Meyers and Mr. Broome.

After March or April, 1935 I had occasion to talk with William Markowitz regarding what was done with the money coming from the sale of leases. That was approximately May, 1935 or the latter part of April. It was in a private conversation with him in the office. I asked Mr. Markowitz about this 60-40 business because there had been an investigation by the State in my office. [51] Mr. Markowitz told me he could not understand why Mr. Broome, Mr. Simons and Dr. Meyers would permit the story they were telling to go about because the actual truth of the matter was that Dr. Meyers was financing the thing out of his own pocket. That Mr. Markowitz and Mr. Simons had purchased the lease structure from Dr. Meyers for \$65,000.00 and that it was their business how much money they made on it.

Mr. Markowitz said "I want to point out to you that our obligation to Dr. Meyers is to get at least 20,000 participating leaseholders and we are going to get him 25,000 or more if possible and the State of Washington will be well served even though we do make a lot of money out of it, if Dr. Meyers can get legislative and political support."

I had never heard previously at any public or sales meeting the \$65,000.00 mentioned. Such state-

(Testimony of Malcolm P. Christensen.)

ments were made after that time in May, 1935 in the Elks Temple in this city, when Mr. Broome made the statement in the presence of Dr. Meyers and others.

Mr. Harry Huse, State Director of Licenses was there and Mr. Broome said at that time that Dr. Meyers was drilling the hole to completion; that the structure had cost him \$65,000.00. He did not say that he had sold it for that. He said it had cost him \$65,000.00 and that Dr. Meyers was guaranteeing the drilling of the hole.

Thereafter, I would say that for a month at sales meetings every Monday, Mr. Broome and Mr. Markowitz both stressed the importance of telling the people that the sales company was not spending any of its money on the well, that Dr. Meyers was drilling the well with his money and his money only. [52]

The sales campaign ended on April 15, 1936. Mr. Markowitz gave the explanation at a breakfast sales meeting held two or three days later. He said the campaign had closed because they had sold all of the acreage they intended to let the public have and were holding the rest for themselves. The major sales offices were kept open. The salesmen's pay was discontinued. Public meetings continued once a week at various places. Sales meetings continued, but only sales managers or former sales managers addressed them. Dr. Meyers appeared at the breakfast of the sales meeting after the close

(Testimony of Malcolm P. Christensen.)

of the campaign, which I mentioned. There was one meeting held, I would say in June, 1936, when sales managers were present at which Mr. Markowitz stated that Mr. Broome, Dr. Meyers, Mr. Simons and Mr. Markowitz had held a conference and decided to convert the lease holdings into stock, that they had appointed a board of directors for the development company to act until an election could be held. Mr. Engler and myself objected very strenuously. Mr. Engler said it would be quite some task to go back to the many thousand of lease holders and to induce them to transfer their holdings to stock after having for a period of two and a half or three years sold them on the idea that leasehold participation in a community plan was the only way to do business. Mr. Simons answered that he appreciated this. However, he said it had become almost impossible to handle the business because of the difficulty in cancelling a community lease.

Mr. Engler said that he felt the people who owned the participating leases would lose confidence in the deal if it had gone through and he asked Mr. Simons why it had been done without consultation with the Branch Managers. Mr. Simons answered that the Branch Managers had [53] nothing to do with that, that they were there to take orders. At this point I stepped in and agreed with Mr. Engler. I asked Simons what he wanted us to give the public. He told us to tell the lease holders that it was done in order to make their stock negotiable; that in the event oil came in they would be able to take care of

(Testimony of Malcolm P. Christensen.)

their transfers immediately without going through the slow process of the recorder's office and Courts.

There was another meeting in October, 1936, when we were called in for something else. Mr. J. F. Simons and William Markowitz were present, and of the sales staff, besides myself were Mr. Engler, Mr. Tusing, Mr. Cedarland, and Mr. McCauley. At that time Mr. Engler objected strenuously to the fact that Mr. Simons and Mr. Markowitz apparently controlled the stock in the company and were able to dictate to the board of directors exactly what they wanted done. Mr. Simons replied that in order to make a company operate they could not have it any other way; that in the oil business they had to have a condition in which instant decisions could be made.

At that meeting they told us that they were proposing to form a new company controlled entirely by the stockholders. The Peoples Gas & Oil Development Company, in other words would take over the drilling equipment and the stockholders would henceforth drill their own well that the Peoples Gas & Oil Company would assign all outstanding contracts to the development company on which there was any money due. They said there was a total of \$700,000.00 still to be collected, if all was paid, which would be more than enough to complete the well and probably commence drilling another if necessary. They frankly stated, however [54] that probably a hundred and fifty or two hundred thousand dollars would not be paid, but that even so \$500,000.00 or \$550,000.00 should be enough to do

(Testimony of Malcolm P. Christensen.)

what they had just stated. This was Mr. Simons speaking. Mr. Engler again objected. He asked what assurance there was that Dr. Meyers would finish the hole if the money did not come in. Simons answered that they had every assurance that Dr. Meyers would finish the hole because he already had \$400,000 of his own money in it. Mr. Engler said, "Is there any place in this agreement wherein it so states?" Mr. Simons answered in the negative. He said, "We don't want to ride a free horse to death." That Dr. Meyers had put enough of his money in. Mr. Engler said "That is a very unsatisfactory answer to take back to the people. What shall we tell them?" Mr. Simons answered, "You can tell them that I said that Dr. Meyers will drill the well if, as and when the money is not sufficient to complete the well." I spoke also during the conversation to back up Mr. Engler, but he did most of the talking. Thereafter we called a sales meeting, or meeting of former salesmen, in the home office and told them the story, and instructed the salesmen to tell the people that Mr. Simons had said Dr. Meyers would complete the well if there was not enough money to do so.

The branch offices closed on June 15, 1937 and at that time I terminated my employment with the company. I had a later conversation with Mr. Simons and Mr. Markowitz in the presence of Mr. Engler, Mr. McCauley, Mr. Tusing and Mr. Cedarland. They asked us to go to work selling partici-

(Testimony of Malcolm P. Christensen.)

pations. Mr. Simons said they were going to set up a new deal and asked us to participate. We declined. Mr. Markowitz took over and talked to us for about two and half hours. [55] He said there would be seven wells drilled in various parts of the state. He showed us a map where they were to be drilled and went into detail, much of which I have forgotten. At the close of the discussion I asked him if I could see his agreement or contract that we were supposed to have to sell if we went to work for them. He gave me one and I read it.

I said to Mr. Markowitz that we had been telling the people of Washington for two and half years that under any and all circumstances Dr. H. Harry Meyers would complete Donney Boy No. 1 with his own money. Later we were told that these assignments were made to help Dr. Meyers so we wouldn't ride him to death, but we were also told that if that wasn't enough he would complete it. Then why the paragraph in the contract stating that at the will of the board of directors certain portions of the money could be used to complete Donny Boy No. 1. "Well," he said, "it is just in the event that Dr. Meyers should pass away or something so that we will be able to go on." I said, "Well Mr. Markowitz as far as I am concerned I won't have anything to do with that for the various obvious reasons: You and Mr. Simons do own a controlling stock in that company, and you hold the board of directors in the palm of your hand; and so far as I am concerned Mr. Markowitz this is just an at-

(Testimony of Malcolm P. Christensen.)

tempt to free Dr. Meyers from any further responsibility, and it is not what I told the public and I will have nothing to do with your deal." Mr. Markowitz said "I am sorry. You will probably change your mind." With that the conference ended.

In the spring of 1935 I talked with J. F. Simons relative to a remark in circulation that the well had been spoiled and that they had skidded the rig and had started a new one. Simons said, "Pay no attention [56] to it. The well has not been moved, I assure you; we are still drilling the same hole."

In October, 1934, I talked with defendant J. F. Simons, relative to the limit of twenty acres of leases to each individual. Simons had called me to his office in Seattle and asked me if I thought that Frank J. Kruger was able to buy more than the twenty acres each he had bought for himself, his wife and his daughters. I told him that I thought he was financially able, but that I understood no one was to have more than twenty acres. He said that that was the policy, but that they wanted to sell more to some outstanding citizens who might become members of the board of directors of a possible producing company so he said he would like to sell Kruger some more and do it personally, and asked me to have Kruger come in to see him. I did so.

Relative to the depth of the hole in the early months of the campaign, the depth was given, but later the information was withheld. William Mar-

(Testimony of Malcolm P. Christensen.)

kowitz told us at a sales meeting in Tacoma in 1935 that it would not be right to give the depth and inform the major oil companies of the progress because they were naturally antagonistic, and further that in drilling a well there were certain hazards and it might hurt the sales campaign if people knew all about every fishing job that was necessary. Thereafter there was no further publication of the depth of the well.

I purchased myself 110 acres and converted all of them to stock. I never received notice of any stockholders meeting. I never attended any such meeting, nor did I give any proxy of any kind on my stock for the election of directors or other business of the company. [57]

At the sales meeting in December, 1934, when defendant Myers was present, Mr. Fisher introduced him as a big-little man of great wealth and responsibility, a millionaire, backing this program and said from now on we should have no doubt in regard to the part, "Who are we" in the three questions, "Who Are We" "What Are We Doing?" and "What Can It Mean To You."

Q. And during the course of your association with the company in the sale of leases, what in general were the themes, the main heads, of what was stressed at the public and sales meetings?

A. There were two outstanding things. The first one was Dr. Meyers' support; and the second one Dr. Meyers' standing,—I mean first was Dr. Meyers'

(Testimony of Malcolm P. Christensen.)

standing in the world, his wealth, his money ; second, was the letters from prominent individuals.

The public meetings last about one and a half hours ordinarily. We were instructed by Mr. Markowitz, Mr. Simons and Mr. Fisher, while he was with us, to make every attempt to close business at the end of a meeting and that was done.

In Exhibit 35 is a copy of "Peoples Progress" of February 27th, 1937, in which is set forth an affidavit. We had about 2000 of these affidavits in blank in the spring of 1937, and we were requested by Mr. Simons and Mr. Markowitz to have as many of the leaseholders sign them as possible. They said that the major oil companies had apparently succeeded in convincing the Government that they weren't on the up and up or something, and they told us that they wanted to counteract the adverse publicity they were receiving through this Government investigation, and that a lot of it could be counteracted if we could show a solid front among the leaseholders. We got [58] as many signatures as possible at a public meeting in Tacoma, and I believe after Mr. Broome spoke we had something like 850 sign at that meeting. They were signed at the door and I, and two other notaries, took their acknowledgments. I signed one of those affidavits.

(Testimony of Malcolm P. Christensen.)

man Hills, under the terms and conditions of which I would be entitled to receive my prorata of 65% of the net returns, if and when production should be successfully established on Frenchman Hills.

6. That the above-mentioned community plan is entirely confined to Frenchman Hills.

7. That no misrepresentations of any nature were made to me at the time of my purchase of a lease from the Peoples Gas & Oil Company or at any time thereafter by anyone, and that I have absolute confidence in the integrity of the Peoples Gas & Oil Company and the Peoples Gas & Oil Development Company.

8. That I am not in sympathy with a civil action filed in U. S. District Court at Seattle, Equity No. 1166, and am opposed to the appointment of a receiver for Peoples Gas & Oil Company, Peoples Gas & Oil Development Co., and Peoples Drillers, Inc., and am opposed to the granting of an injunction and other relief asked in this suit.

(Space for additional writing if desired)

(Signed): F. E. KING

(Address): Puyallup, Wn.

Subscribed and sworn to before me this 30th day of March, 1937.

[Seal] M. P. CHRISTENSON,
Notary Public in and for the State of Washington,
residing at Tacoma.

[Endorsed]: Filed June 28, 1943.

(Testimony of Malcolm P. Christensen.)

Cross-Examination

By Mr. Simon:

It is true that one of the reasons Mr. Markowitz gave for keeping the depth of the well to themselves was the fact that it had come to his attention that people were getting false knowledge as to the depth, therefore, no salesman should be allowed to give any information regarding it.

From time to time bulletins of instructions from the home office were received and I instructed my salesmen to follow them. I recognize Exhibit A-5 as one of these directional bulletins from Mr. Markowitz. We put it on the bulletin board and tried to follow it.

Exhibit A-5 admitted in evidence.

DEFENDANT'S EXHIBIT No. A-5

Bulletin No. 130

December 16, 1935

To: Markowitz & Toub
Engler
Christenson
Cedarland
McColley
Tusing
Swarts
Van Pelt
Hunting

From: W. Markowitz

“Information” on Drilling Operation
One of the most gratifying phases in connection

(Testimony of Malcolm P. Christensen.)

with our campaign in the State of Washington, is the highly commendable manner in which our sales representatives conform to the policy and rules of this Company in the sale to the public of leases on Frenchman Hills.

For the sake of those newer men who may not be fully aware of our strict policy in this regard, I would, at this time, again like to call to your especial attention that there must be No Misrepresentation or overstatement in offering our leases.

No Salesman, Under Any Circumstances, must undertake to give "information" or even an opinion as to the depth of the well—Donnie Boy No. 1—now being drilled by the Peoples Gas and Oil Development Company. This information, Mr. William A. Broome states, will be forthcoming directly from him when he considers the time right and proper, and to the best interests of their operation and our leaseowners to make it public. Any salesman who undertakes to "guess" at the depth which has been reached is guilty of gross misconduct, and should we hear of any such violation, he will be Immediately Dismissed.

Furthermore, no one knows definitely how long it will require to finish the operation. Mr. Broome has repeatedly stated that they are working with the greatest possible speed, with the best equipment available, and with three shifts of men. No Sales Representative Should Undertake to State How Long It Will Require to Complete the Drilling of the Well. He does not know—hence he is not in

(Testimony of Malcolm P. Christensen.)
position to express an opinion. This sort of a violation will also result in Immediate Dismissal of the violator.

It is our earnest hope that our men will continue to work with Truth, Honesty and Sincerity uppermost in their minds. We are seeking widespread support of the people towards what we consider to be a most worthy cause. We can only expect to obtain such support if we, in turn, so conduct our business and our dealings with the public that the people will become imbued with the true Spirit and Ideals of the P. G. & O. Program, and will want to lend their support and friendship.

I Repeat: We Would Rather Pass Up One Hundred Contracts than to have one dissatisfied leaseowner who bought his holdings because of any misunderstanding or slightest misrepresentation.

We ask for your earnest co-operation.

WM. MARKOWITZ

[Endorsed]: Filed Oct. 9, 1942.

I recognize Defendant's A-6 for identification as another of the bulletins issued by Mr. Markowitz.

Exhibit A-6 admitted in evidence.

(Testimony of Malcolm P. Christensen.)

DEFENDANT'S EXHIBIT A-6

Bulletin No. 57

July 24th, 1935.

To: Stowell & Markowitz
Engler
Christenson
Van Pelt
Hunting

From: Wm. Markowitz.

Misrepresentation

You have been repeatedly cautioned against permitting misrepresentation on the part of any salesman of the facts surrounding our program. We are gratified that very few instances have come to our attention of such misconduct, but even those few instances are highly embarrassing and altogether uncalled for.

I call your particular attention again to the fact that Mr. William A. Broome, President of the Peoples Gas & Oil Development Company does not deem it to the best interests of the operation to give out at this time any statement concerning the present depth of the well. Inasmuch as this information is not available, any representative undertaking to furnish such purported information to any leaseholder or prospective leaseholder is plainly guilty of gross misstatement, and it is not necessary to say again that we cannot—And Will Not—countenance such practice on the part of anyone.

(Testimony of Malcolm P. Christensen.)

Mr. Broome further informs me that the Development Company is straining every effort to carry on this project with the greatest possible efficiency, and it is certainly not in keeping with the spirit of this development that any of our representatives should take it upon themselves to make statements that cannot be certified as positive facts. They are unfair not only to themselves, but to their fellow workers, their organization and the public, as well.

Please Caution Your Men Strongly About
the Above.

We have repeatedly stated in past bulletins and in practically all sales meetings that we are desirous of interesting only such prospective leaseholders as are genuinely interested in the tremendous importance of the development of the latent natural resources of the State of Washington, and who want to share in the possibilities which oil and gas offer. This whole program can only be properly presented to them when Truth and Sincerity prevail in every remark made by the salesmen.

Please impress emphatically upon your men that only such data as is regularly furnished to them by the office, and which has been carefully checked by us beforehand, may be employed by them in their talks.

It might be well to devote a few moments at each meeting in bringing out the importance of the above, and in impressing upon each individual salesman

(Testimony of Malcolm P. Christensen.)
the importance of Conscientiously and Honestly
presenting this program.

W. MARKOWITZ.

Bulletin No. 69

August 6, 1935

To Stowell & Markowitz

Engler

Christenson

Van Pelt

Hunting

From Wm. Markowitz

Re-selling of leases

As stated on many previous occasions, the Peoples Gas and Oil Company is not in the brokerage business, and we certainly do not want to encourage speculation in leases. In spite of that, we understand that some salesmen seem to have overlooked, or purposely violated, this important policy of the company.

Please make it very plain to every man that no salesman, under any circumstances, is permitted to re-sell a lease for any leaseholder. Such procedure, if found out, will result in the instant dismissal of the man responsible.

If the purchaser is buying a lease Only for the purpose of re-sale, then we do not want his business. His unqualified support of, and friendship toward, our program is, and always has been, a paramount issue, and we only want those purchasers who are earnestly interested in the development of the oil and gas possibilities in the State of Washington.

(Testimony of Malcolm P. Christensen.)

I trust that it will not be necessary for me to have to caution you again about this important matter.

W. M.

William Markowitz

EC

[Endorsed]: Filed Oct. 9, 1942.

There had been occasions when a salesman had assumed to tell the purchaser that he would make a resale for him at a later date and with reference to that the bulletin said any salesman doing so would, if found out, be dismissed. That rule was enforced. The last time I was at the well was in May, 1937. The drilling was going on at that time. I would say the equipment was good and I think they did a tremendous job of drilling a hole. [59]

Defendant's Exhibit A-8 is one of the bulletins received from the home office with reference to the matter of securing affidavits.

Defendant's A-9 is one of the affidavits that I procured.

Exhibits A-8 and A-9 admitted in evidence.

(Testimony of Malcolm P. Christensen.)

DEFENDANT'S EXHIBIT No. A-8

[Marginal Note]: Do Not Hold Signed Affidavits in Your Office, But Forward Them to This Office Each Day.

[Stamped]: Important

27th February, 1937.

Mr. M. P. Christenson, Manager,
Tacoma Office.

Dear Mr. Christenson:

We are forwarding to your office today a supply of Affidavit forms—the same as that which appears on Page Seven of the current issue of “Peoples Progress”—and I ask that you carefully adhere to the following instructions:

- 1—Every purchaser of a lease from us, who subsequently assigned the same to the Peoples Gas and Oil Development Company in return for a participating interest in their “community plan of development,”—who comes into your office for any reason—should be asked to read the Affidavit carefully, and to sign the same if he or she is in complete accord with the statements which it contains.
- 2—This will, of course, entail your sticking to the office Very Closely, as I should much prefer that you attend to such matters personally, and it will also be necessary for you to witness signatures as a Notary Public.

(Testimony of Malcolm P. Christensen.)

3—A total of 2,000 of these Affidavit forms is being sent to you. You will receive instructions in due time as to the manner in which they are to be distributed at the forthcoming meeting in Tacoma.

4—While We Most Assuredly Do Not Want to Talk Any One Into Signing This Affidavit, and It Must in Every Single Case Be Done of Their Own Free Will and Accord, I am confident that 100% of those who read the Affidavit will be glad to sign the same.

5—You will be careful to witness each signature as a Notary Public.

With best wishes, I am

Sincerely yours,

J. F. SIMONS—President.

JFS*r

[Endorsed]: Filed Oct. 9, 1942.

Some of the affidavits were executed on the form clipped from "Peoples Progress", others on special printed forms. I think between 1300 and 1400 were signed in Tacoma alone. I saw a pile of them in the Seattle office and a man told me there were 5000. I did not count them.

Respecting the assignment Exhibit 10-B in a sense the purchaser had an option as to whether or not to make the assignment, but if he did not do

(Testimony of Malcolm P. Christensen.)

it we did not sell him. We were instructed to say that purchasers had the option of making assignments, but the managers were told not to accept any contracts without the assignment because it would involve a possible competition. A group might get together individually so we were instructed not to run contracts through unless the assignment agreement was signed.

One of my salesmen did sell one lease without the assignment and it was accepted in the home office, but I was taken to task for it.

It was the definite policy to tell the prospects that this was a gamble and unless they could afford to lose their money they had better wish us well and keep their money in their pocket because nobody could tell what was under the basalt on Frenchman Hills until it was pierced by the drill. [60]

I wrote the bulletin Exhibit 34 I-1 for my salesmen and I emphasized the following:

“Do not fail to point out very clearly in the course of your presentation that this is a speculation and there is a possibility of their losing their money; but that all hazards, insofar as humanly possible, have been removed. The chance they take is whether or not there is oil or gas in Frenchman Hills.”

That bulletin was not window dressing. It was the Bible we worked on in the Tacoma office, and so far as I know every other office in the state was conducted on the same basis.

(Testimony of Malcolm P. Christensen.)

The clip sheet, plaintiff's Exhibit 32 was part of a salesman's kit. We called it a "tear sheet" and it was to show the favorable publicity that the enterprise was receiving.

Defendant's Exhibit A-10 is one of the bulletins I received as Manager of the Tacoma office.

Thereupon defendant's Exhibit A-10 was admitted in evidence.

DEFENDANT'S EXHIBIT No. A-10

Bulletin

July 8, 1935

To: Stowell & Markowitz
Engler
Christenson
Van Pelt
Hunting

From: William Markowitz

It just comes to our attention that there have several sales made to people who are on relief.....

We have repeatedly stressed the fact that we do not want to sell people in such straightened circumstances. A speculation of this kind is not the proper thing for them to have, even though they could pay for it. We tell you now very definitely that we do not want this kind of business and every time it comes to our attention that any leaseholder is in such condition, we will unhesitatingly cancel his or her contract, refunding the amounts paid in

(Testimony of Malcolm P. Christensen.)

and charge back the full amount of commission to the salesman or salesmen.

A violation of this rule will not only warrant dismissal, but would avail the salesman nothing as the commissions are charged back.

Also, it not only puts the company and its principles in a bad light, but causes us an unwarranted expense in entering and having to cancel these contracts.

We will not tolerate any of this kind of business.
Please stress the importance of this to each and every salesman in your organization.

Thank you!

.....
William Markowitz

WM:lcd

Exhibit A-14 is correspondence relative to a complaint by an investor that misrepresentation had been made by a salesman. The investor, an elderly woman named Mrs. Wagner was refunded her money by the home office.

Defendant's Exhibit A-11 and A-12 are bulletins received by me as manager of the Tacoma office.

It is not true that Mr. Fisher was the only one who had spoken about the number of wells to be drilled. Mr. Broome also made that assertion several times in Tacoma. He made the assertion during the summer and fall of 1935. He made the statement several times in the presence of others,

(Testimony of Malcolm P. Christensen.)

in the presence of Mr. Simons and Dr. Meyers, that Donny Boy would be drilled until oil was found and that [61] Frenchman Hills would be drilled until oil was found or until such a time as there was no chance of finding oil there. It was said that the first well would be completed and that whether more would be drilled would depend upon the advice of eminent geologists who would make the recommendation.

I never heard the statement that there would be drilled four shallow wells, eight deep wells, or any other number of wells simultaneously. I mean nobody claimed they were going to drill any more wells than was necessary to bring in production or to find out whether or not it was worth drilling. I don't think Mr. Fisher did either.

Plaintiff's Exhibit A-13 and A-7 were admitted in evidence being bulletins of the Peoples Gas & Oil Company.

Mr. Simon. This is bulletin No. 98.

(Exhibit A-7 read to the jury by Mr. Simon.)

The Court: Let's get along, Mr. Simon. We are losing an awful lot of time here and I must admonish you you must frame your questions and adjust them so as not to waste so much time. Do I make myself clear?

Mr. Simon: Yes, your Honor. I have done my very best to expedite this thing and I——

The Court: I can't direct counsel's questions, but be sure to have your questions you propose to

(Testimony of Malcolm P. Christensen.)

ask and then ask them. I don't want to appear to grow impatient, but I want this case to move along.

Mr. Simon: Well, if your Honor please. It hasn't been our fault that this case was not tried for three years until this——

The Court: I don't care to argue that with you now. We are not going to discuss that; but I am just suggesting to you [62] that you proceed with your examination.

Mr. Simon: I am doing my very best, your Honor.

The Court. You are losing a lot of time between questions.

Mr. Engler and I objected to the arrangements for turning the drilling operations over to the stockholders with the unpaid contracts receivable because we had told the people that Dr. Meyers would finish the well and the contracts making the change only gave Meyers an option to take back the drilling equipment and continue the drilling and did not obligate him to do so. We objected because the contract did not impose an absolute obligation, but merely an option, and because of what we had told the people we wanted it in black and white. I do not recall what Mr. Markowitz' answer was to our demand that the obligation of Dr. Meyers be placed in writing.

I heard defendant Meyers address sales meetings possibly five or six times and public meetings perhaps eight or ten times in Seattle and Tacoma. I never received any instructions from Dr. Meyers,

(Testimony of Malcolm P. Christensen.)

but I was criticized through Mr. Markowitz because Dr. Meyers objected to some of the things I did.

Re-Direct Examination

By Mr. Hile:

Relative to the affidavits, Defendants A-9, Mr. Broome, at a public meeting, in the presence of Mr. Simons, said we were being attacked by the major oil companies through the interest back of the receivership action; that it was a direct attempt by the major companies to discredit the Peoples Gas & Oil Development Company and the Peoples Drillers. He asked the people as a personal favor to him for all his hard work, [63] to sign these affidavits. He went through the affidavit point by point and asked the crowd if they agreed to it and there was quite a favorable response from the crowd. There were about 1000 people, about 800 of them signed and about 200 did not. The affidavit forms were handed out by salesmen and the people were brought up to myself and three Notary Publics who had tables outside. We brought the people up and they signed and swore to them as they left the hall. With reference to the correspondence regarding the Wagner refund, Defendant's Exhibit A-14, there were over 8000 contracts sold by the Tacoma office and I know of only this one refund, but believe there was one more. I received instructions from William Markowitz and Mr. Simons to handle all such cases in the Tacoma office and in no case to offer complainants their money back but

(Testimony of Malcolm P. Christensen.)

to send them in to the Seattle office so that they could resell the contracts before any money was returned. I was instructed that we had to hold the return of money to the absolute minimum because it otherwise might cause a runaway. At all costs we were to keep them sold if at all possible. I followed these instructions.

In connection with the defendant's exhibits referring to the investment as a speculation and gamble none of these bulletins were given out to the public so far as I know. At the public meetings and in sales the matter of speculation was presented in this way: We told customers that it was an absolute gamble in this or any other field, but that all the gamble and speculation that was humanly possible had been taken out when the developing company was headed by a man of Mr. Broome's geological and engineering experience and when we had men like Dr. Meyers, who were millionaires, who backed it with their money to guarantee [64] its completion, that under the circumstances it was a very good gamble. Mr. Broome stated many times in the presence of other defendants and in the presence of Dr. Meyers that people who under such circumstances did not buy were no gamblers at all and ought to have their heads examined.

With reference to Mr. Fisher's statement as to drilling more than one hole the matter was presented in this way: Mr. Fisher would state that they would drill one hole, and if the geology showed that it was feasible and proper they would

(Testimony of Malcolm P. Christensen.)

drill two holes, or three and maybe four and in that connection Mr. Fisher used to point out that at Signal Hills California there had been drilled five to seven dry holes before the last one came in a success.

Q. In the public meetings which you attended, where the defendants other than the defendant Broome alone were present, was the factor of speculation and gamble qualified?

Mr. Simon: The same objection.

The Court: He may answer.

A. I don't quite understand your quesiton. By "qualified" you mean what?

Q. Well, was it modified?

Mr. Simon: I object to it as repetition, if the Court please.

The Court: Objection overruled. He may answer.

Mr. Simon: Exception.

A. Yes, it was qualified in this way: At public meetings—and also we sold that way—we told them that it was an absolute gamble and an absolute speculation in this or any other field; but that all of the gamble and speculation that was humanly possible to take out had been taken out when the Development Company was headed by a man of Mr. [65] Broome's geological and engineering experience, and when we had men like Dr. Meyers, who were millionaires, who backed it with money to guarantee its completion, men of reputation of that kind; that every possible gamble had been

(Testimony of Malcolm P. Christensen.)

taken out of it, and that under the circumstances it was a very good gamble. Mr. Broome stated many times that people who,—in the presence of the former defendants and in the presence of Dr. Myers,—that people who, with that kind of a background of the company, with all of the speculation taken out of it that it was humanly possible to take out, if they didn't buy under those circumstances, they were no gamblers at all and ought to have their head examined.

Q. With regard to the question asked you on cross examination about any statement made by Mr. Fisher as to the number of wells, will you state how that was presented by Mr. Fisher?

A. Mr. Fisher would state, and did state——

Mr. Simon: Objected to as improper re-direct examination, your Honor.

Mr. Hile: It was opened up by the defense, your Honor.

The Court: Upon that ground, objection overruled. Any party can at any time recall the witness for further direct or further cross.

Mr. Simon: I object to it further on the ground that it is repetition, having been gone into at length by this witness on direct examination. I was criticized a little while ago for delaying this trial.

The Court: I hope we are going to get along.

Mr. Simon: I am trying my best, your Honor, and I would like to have the record show an exception.

(Testimony of Malcolm P. Christensen.)

The Court: Your objection was overruled, and that is all there is to it. [66]

Re-cross Examination

By Mr. Simon:

I testified a few minutes ago, that I did not think much of the explanation given for not publishing the depth of the well. At the former trial, I testified that I never knew the depth myself, and therefore did not tell my salesmen to give it; that if salesmen were told one week the depth was 1000 feet, they would next week say it was 1500 feet, and that this was a good reason for not telling them.

I did not have very many complaints, such as shows by Ex. A-14, prior to the Dickason suit. I probably sent two or three over to Simons & Markowitz to take care of and I probably took care of a couple of dozen, but that is not many out of 8000. [67]

MRS. MAE FISHER,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live in North Hollywood. In 1934 I lived in Seattle. I met defendant Meyers in my home. I had a dinner party and he was there with the two Markowitz brothers and Mr. and Mrs. Simons and my husband, Bert Fisher.

(Testimony of Mrs. Mae Fisher.)

Dr. Meyers commented on the dinner and on what a lovely family I had, and I think I complained of not seeing much of my husband who was busy day and night. He was working for the Peoples Gas & Oil Company. Mr. Meyers told me not to worry about a thing, that he had a lot of money, that he had made a fortune in Europe and that he had a lot of enterprises in his day and just got through with the biggest one he ever had, the Golden Gate Bridge at San Francisco, California. He also said that what he was going to do for Washington was the biggest thing of all. He talked all evening about the Golden Gate Bridge and what he was going to do for Washington. He said that he had built the Golden Gate Bridge. He said that he was the engineer. He also said that he had built other bridges, I believe, in London or somewhere in England. He said three or four times during the evening that as long as Mr. Fisher would stay with him he would have money, as would everybody that stayed with him.

Prior to coming to Seattle I met defendant Simons in Los Angeles two or three times before coming up. I went to him for money to make the trip with my children to [68] Seattle as my husband had advised me. Mr. Simons said he did not have the money and told me to come back in a week.

Cross-Examination

By Mr. Johnson:

My husband had started employment with the

(Testimony of Mrs. Mae Fisher.)

Peoples Gas & Oil Company a month or two before I came up. My husband told me that Mr. Simons would pay the fare for me up here. My husband had sent me very little money before I came up. I imagine that he had been working for one or two months before I came up.

Mr. Smons did give me the funds to come up here. He first said he did not have it, that he would have it in a week. I received enough for the fare whatever it was. I do not recall the amount.

The first and only time I met Dr. Meyers was at my home. He then said he was the engineer that built the Golden Gate Bridge and had built bridges in England. He talked about a couple of them, as far as I remember. He went on talking and said he had made a fortune in Europe. As to whether he had actually built the bridges or promoted them, as engineer, I thought he had built them. That was the impression from his talk.

I afterwards inquired of Mr. Markowitz and Mr. Simons regarding Meyers and they both said the same thing, that Dr. Meyers had said. The way Meyers spoke I thought he built the projects rather than having been only associated with them. [69]

M. B. FISHER

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

I live in North Hollywood, California. I knew

(Testimony of M. B. Fisher.)

the former defendants J. F. Simons and William Markowitz. I met them first in the latter part of 1930 and the early part of 1932. They owned a corporation known as the Atkins Corporation in Los Angeles and I was employed by them. They were developing Arrowhead Villas, a club at Arrowhead Lake. I believe I continued only about ten days. I made two sales.

Later I met J. F. Simons, approximately April, 1934, in California. He asked me if I would consider going up to Seattle, Washington on a project he had up there that looked like a very good opportunity to earn money. He said he and his associates had obtained a large block of acreage in the State of Washington and had everything necessary to make an oil development and possible sale of leases successful. He had with him the proof of a broadside from a local printing concern. He opened this up and showed me the geographical position. He particularly pointed to a letter from the Northwest Gas & Oil Association and called attention to the names of geologists, Ward Blodgett, Dwight Roberts, and Duane, stating that they had them on the geological staff; that he also had Bill Broome who had been very successful and had been one of the partners that brought in the large Tampico Wells in Mexico and other successful fields throughout the country.

He asked me if I had heard of Dr. H. Harry Meyers to which I said no. He told me that Dr. Meyers was the man [70] who was going to see

(Testimony of M. B. Fisher.)

that the project was put through to a successful completion. That Dr. Meyers was a philanthropist, multi-millionaire; a man who had recently been responsible for the building of the Golden Gate Bridge.

Mr. Simons said in his opinion there was no question but what I could make at least five or ten sales of leases a day and from \$50 to \$100 per day if I came up. He told me to keep in touch with Pat Robkins.

As a result of the conversation I came to Seattle in company with Pat Robkins and several salesmen. On arrival at Seattle I first saw Jimmy Simons. He instructed us to be in his office in the Fourth and Pike Building the next morning. He did say one thing. He said "You remember I mentioned we had Dr. Meyers behind this deal Bert." I said "Yes." He said, "Well here is Dr. Meyers now."

I went to the office the next morning. There was a telephone room under the direction of one Larry Goldner. He called it a "Boiler room." Goldner had in his employ several people who were attempting to obtain leads by the use of the telephone. These leads would be turned over to us to make sales. Thereafter he had a crew of lady solicitors going from house to house obtaining leads that would be turned over to us to make sales.

Mr. Simons explained the entire enterprise. Later he introduced to us *to* Mr. Broome who gave us a lengthy talk on the geological aspects of the prop-

(Testimony of M. B. Fisher.)

erty. His talk convinced me that he knew his business.

I met defendant Meyers the day after our arrival. J. F. Simons and several salesmen were present. Mr. Simons said one reason why the deal would be so successful was that Dr. H. Harry Meyers was behind it. He said Meyers was a [71] developer and promoter of big jobs; that he had been instrumental in building several bridges and large enterprises throughout Europe and had recently successfully completed building the Golden Gate Bridge and that we were indeed fortunate in having a man of that caliber behind the project.

Dr. Meyers welcomed us to the state and to the project and told us that Mr. Simons would be able to explain the entire proposition in the office and further that we had a treat in store for us in meeting Mr. Broome who would be in charge of the development. He said we would be in a position to do well in a monetary way and to do a great job in bringing in oil in Washington which he was satisfied would be done. The first meeting with Dr. Meyers was very brief.

The method of soliciting business by imported salesmen was not very successful. Simons asked me why I had not been doing much business and I told him the entire project was being presented in the wrong way, that since this was a civic enterprise the way to present it to the people of Washington would be to discontinue the imported sales-

(Testimony of M. B. Fisher.)

men and endeavor to obtain local representatives to present the proposition to the local people, based upon the fact that it would bring oil and prosperity to the State of Washington.

Mr. Simons thought this was an excellent idea and asked what steps I would take. I said I would first call in all the salesmen that were brought up, and some of which came with me, from Los Angeles because in the first place they were doing as little business as I was, secondly they were getting into debt at the hotels; and third, advertising should be placed in the newspapers to acquire and teach local representatives. Simons said I wish you would tell the story to Dr. Meyers, particularly respecting sending the [72] salesmen back and paying their hotel bills, because he is the real man behind the project and the deal. The same afternoon, or possibly the next morning, I talked with Dr. Meyers and went into details, approximately as I had with Mr. Simons. He said he would take care of the hotel bills and he did that.

Simons asked me to take the job of developing and teaching men and I agreed. I asked him what remuneration I would receive and he said we will take care of your bill first and will give you \$50 or \$75 a week for the first week or two to see what develops and if successful we will make further arrangements.

He asked me if I had ever been in trouble, or had been convicted. I told him I had at one time when I was a shoe merchant and went through

(Testimony of M. B. Fisher.)

bankruptcy in Detroit, that I was indicted and given a suspended sentence of three months. He said, "Well, that doesn't make any material difference. Have you ever sold any stock or been indicted for any selling of any kind or nature?" I told him I had never sold any stock and that my experience in teaching salesmen had been in a subdivision enterprise in Detroit and later in Chicago.

I was then given the job of sales manager, about two or three weeks after I had arrived. I was called into a meeting with J. F. Simons, William A. Markowitz, Broome and Derby Markowitz. Mr. Simons told me that in instructing salesmen I was to dwell on the fact that we had this structure well geologized and qualified, that heading the development program was William A. Broome, who had vast experience and a successful career in bringing in oil fields throughout the country; that we had men like Mr. Simons and Mr. Markowitz and Dr. Meyers, who in his opinion was one of the greatest men he had ever met, [73] due to his long and successful campaign throughout the world in the building of big projects. That Dr. Meyers being worth many millions had pledged his entire support and money toward a successful completion of the project. I was to point out that in selling the project the men would not only make material gains for themselves, but would gain further when, as and if oil came in.

Mr. Broome then told me how he had acquired the structure, of how many years it had taken him

(Testimony of M. B. Fisher.)

to do that; that he had spent practically every dollar he owned upon it, that he had encountered many difficulties with the major oil companies in his efforts to develop Frenchman Hills, feeling as he did that Frenchman Hills presented one of the greatest opportunities for oil in the world. That finally he had met Dr. H. Harry Meyers and he had encouraged him, and Dr. Meyers had introduced Markowitz and Simons as his colleagues, and had said that they would go up with him and look into the project and see whether or not it was worthy of his support; that this was done and that was how the deal was put together and with men like Simons and Markowitz backed up by Dr. Meyers there was every reason to believe that Frenchman Hills would become a producing structure and Washington a producing state.

Broome further said to instruct the salesmen that the plan was to drill at least eight wells, four deep tests and four shallow; that the shallow wells were to be similar to those that were producing natural gas in the Rattle Snake Hills, because it was his opinion that not only did Frenchman Hills have commercial oil, but that it would be made into a natural gas field at the same time and the natural gas would bring in huge profits because it would create [74] cheap fuel and power for Washingtonians. He said he had 135,000 acres and there were several anticlines, domes, and structures on Frenchman Hills and also something like 30,000 or 35,000 acres in a structure known as Rattlesnake Hills and that someday they would be combined, but that

(Testimony of M. B. Fisher.)

at present were to offer only Frenchman Hills acreage.

Mr. Simons further pointed out the method of selling and we discussed what my duties were to be.

The next morning we salesmen went up to the office and Mr. Simons introduced us to Mr. Broome and said Broome would tell us about the structure; that he was the man who had put the structure together and was responsible for the drilling and bringing in oil there and was well qualified to do so because he was a very eminent authority and a very prominent geologist and had been very successful in oil projects throughout the country and bringing in several structures.

Thereafter I addressed sales meetings for training salesmen and public meetings once a week in the evenings. At first we had only one office in Seattle. Later we opened branch offices and I went there to give lectures also. I recall that Dr. Meyers addressed some of these meetings. I recall on one occasion he addressed a sales meeting that was held in the Gowman Hotel at a breakfast. We inaugurated a system of having Monday morning breakfasts for all salesmen. On another occasion I recall he addressed a sales meeting in the offices at Fourth and Pike Building at Seattle. The meeting there I would place in the fall of 1934. At that meeting there were present J. F. Simons, Sam Markowitz, William A. Broome, Dr. H. Harry Meyers and I do not recall how many salesmen, possibly over 100. In speaking of Derby Markowitz and Sam Mark-

(Testimony of M. B. Fisher.)

owiz I mean they are one and the same. He was a brother to William Markowitz.

Q. Do you recall what you said in that connection? [75]

A. Yes, approximately. I introduced Broome in the same manner I had been talking about him up to that time; the fact that: Here is the man we are going to look to for the bringing in of Frenchman Hills as an oil-producing structure; and, he is the man who is going to bring oil to the State of Washington, bring prosperity to the State of Washington; and certainly the responsibility rested upon the proper shoulders because William A. Broome quite evidently was the man who could do it, because, first, second and third he was a man of noble character, a man of proven qualities, a man who has done big things in the field of petroleum; he has brought in several successful fields; and a man, a geologist in his own right, a man who knows his business; and, last of all, a man who put every single penny of his own into the putting together of this structure to make this deal possible.

Mr. Broome then spoke and said he would do his best to bring to fruit the words of his colleague, Mr. Fisher, and he pledged everything he had and every power at his command to make Washington an oil producing state.

I also introduced Mr. J. F. Simons. I said I regretted his partner and colleague, Mr. William Markowitz was not there, but that the team was well and ably represented by J. F. Simons, the

(Testimony of M. B. Fisher.)

President of the Peoples Gas & Oil Company and went on to relate how Mr. Simons, together with Mr. Markowitz had developed some great projects in their life, particularly the enterprise known as Arrowhead Villa.

I introduced Dr. Meyers as a man all of us were very proud to be associated with, a man of vast experience, a man who had all his life done big things, who had amassed a considerable fortune in his life, and one who would see to it that this project would be brought to a successful conclusion.

I instructed the man in selling to point out that there were three reasons why this project should be [76] successful. First, "Who Are We?", second "What Are We Doing?" and third, "What Will It Mean to You?". The part, "Who Are We?" was very important because no project could be successful unless it had responsible and reliable men behind it. I pointed out the responsibility and reliability of J. F. Simons and William Markowitz, who were the head of the company we were employed by, and for, Mr. William A. Broome, *the* man at the head and responsible for the development and building of the project; and behind both of those men and companies stood Dr. H. Harry Meyers with his wealth, intelligence and experience to bring to a successful conclusion the entire project.

Second, "What Are We Doing?" I pointed out the reason why Frenchman Hills was worthy of a test, by drill, going into the geological reasons and

(Testimony of M. B. Fisher.)

the work that William A. Broome had done, speaking of the advisory geological board and bringing out the experience and abilities of men like Dwight Roberts, Duane and the different geologists who were on the advisory board and bringing out the fact that men of that caliber and experience certainly knew how to do the developing and drilling.

Then on the point "What It Will Mean To You?" I went on saying that first by purchasing leases themselves they would make a lot of money after oil was brought in and second by telling the story their acquaintances and friends in their communities they would assist their friends to share in the profits, as well as have a part in enriching the State of Washington.

After we began to have public meetings and instructing the salesmen that it was their duty to bring in not only the people they had sold, but any prospects they thought were [77] likely to be sold because at those meetings the prospects would have an opportunity to hear and see in person the men behind the project. I explained to them by doing so they would help to make sales.

I recall one public meeting in the late fall of 1934 in Seattle when defendant Meyers was introduced and spoke. I introduced Mr. Broome and Mr. Broome introduced Dr. Meyers. He introduced Meyers as the man who was going to see to it that this project was brought to a successful conclusion; that Dr. Meyers was able to shoulder such a vast responsibility, that he was a big man accus-

(Testimony of M. B. Fisher.)

tomed to doing big things, his last job proving that fact emphatically, that he had just finished building the Golden Gate Bridge, and that after he had brought in oil in the State of Washington he had other great projects that would bring in more wealth and prosperity. He said that Dr. Meyers was planning someday to build a tunnel through the Cascades connecting the east and the west State of Washington.

Dr. Meyers responded. He acknowledged the introduction and thanked Mr. Broome and spoke briefly. I do not recall his exact words. He thanked the people for being there. He said that he would do his absolute best to make the words of Mr. Broome true. He said "I pledge every dollar that I possess and every breath in my body toward the project now undertaken by the Peoples Gas & Oil Company." I definitely recall this statement.

During the time of my employment I would say that Dr. Meyers addressed sales meetings two or three times. I recall that breakfast meeting, one other meeting and I believe he accompanied us once to address a sales meeting here shortly after we had opened the Tacoma office. [78]

In addition to what I had mentioned I recall introducing Dr. Meyers one time and saying that Dr. Meyers was a man of great ability, great ambition and great wealth, and that he had pledged those three qualities toward the successful completion of this project.

(Testimony of M. B. Fisher.)

During my stay here I believe Dr. Meyers addressed public meetings twice. Every time he was present at sales meetings he made some remarks. That was not true of public meetings. I recall seeing Dr. Myers once or twice at a public meeting where he did not make an address.

In respect to the raise of prices on leases I had a talk with defendant J. F. Simons I would say late in June or in the early part of July, 1934. I believe only J. F. Simons and Sam Markowitz were present. Simons said they had to raise the prices because in the first place the price had been *in* introductory price only and had caused them to lose money and secondly they were engaged in purchasing equipment for drilling the wells of Frenchman Hills and there was not sufficient money coming in to do all those things. He suggested the raise from \$10.00 to \$20.00 an acre. I advised him against the drastic raise and suggested several steps and finally he acquiesced and agreed on the first raise to \$12.50 an acre or \$62.50 for five acres.

Thereafter there were several other price raises and I talked with J. F. Simons, William Broome and Dr. H. Harry Meyers regarding them. I believe it was at the time of the second price raise when I had occasion to meet Dr. Meyers in his hotel rooms. I mentioned that I had talked with J. F. Simons and had advised the next raise to \$15.00 but that he had outvoted me and made it \$17.50. I asked Dr. Meyers what he thought of it. Dr. Meyers said while [79] he congratulated me on the splendid showing I had made at that time, that he believed

(Testimony of M. B. Fisher.)

I would be better off accepting Mr. Simon's counsel as he had had a lot more experience, and he believed a jump from \$12.50 to I believe \$17.50 would be better than a jump from \$12.50 to \$15.00, if I recall it correctly.

Dr. Meyers had come up from California and we had a dinner at my home. J. F. Simons and his wife, Sam Markowitz, and his wife, Dr. H. Harry Meyers and William Markowitz were present.

At that time in a conversation with my wife, Dr. Meyers said he was placing all his energy and money toward the successful completion of the project. He said he had built several bridges in Europe and had introduced antiflogestine, or Denver Mud, in England and had sold out at the fabulous price of several hundreds of thousands pounds to a London company headed by Lords and peers and he said he had been instrumental in building the Golden Gate Bridge and that all of these things would fade into pale significance compared to the beautiful job he was doing in the State of Washington, first by having oil brought in and second by building the Cascade Tunnel.

Dr. Meyers said he had sold out this "Denver Mud" in England for several hundred thousands pounds and when he came back to America he brought back with him several millions of dollars.

In the latter part of October or November, 1934 I had a conversation with defendant Broome as to his qualifications, and thereafter talked with J. F.

(Testimony of M. B. Fisher.)

Simons and then with Dr. H. Harry Meyers regarding it.

Q. And was anyone else present at this conversation with the defendant Meyers? [80]

A. No sir; there was not.

Q. What, if anything did you say to the defendant Meyers?

A. I told him that I had just come from Mr. Simons after discussing what Bill Broome had told me the night before, and told Dr. Meyers, "Did you know, Dr. Meyers, that William A. Broome, in a conversation in my automobile coming home from Tacoma after the Tacoma meeting told me that he was discouraged, that he was disgusted with the entire project; he had a good mind to blow the whole thing up as he could; that he didn't think there was any oil in Frenchman Hills; that in the first place he wasn't a geologist, never brought in any successful field anywhere in the country. He did have something to do with some little field, tried to promote the sale of something or other in Kentucky, which had blown upon him; he had spent a great part of his life in the sale of lots in Florida, Chicago, Detroit, California; at one time he was violinist in the Detroit Symphony; that the reason that he was disgusted was that he was led to believe by Mr. Simons that he would be receiving a nice, handsome remuneration while he was doing this work for them, but that the opposite was the truth, he was living in squalor and poverty while Simons, Meyers and Markowitz were living in splendor,

(Testimony of M. B. Fisher.)

throwing away their money; that he, Broome, had accumulated a lot of bills; and was on the verge of being sued, ejected from his home; his children had no clothing. I asked Dr. Meyers if he knew all of those facts. Dr. Meyers said "Yes and No; but they are not important to me, Mr. Fisher. If you discuss them with Mr. Simons, anything that Mr. Simons tells you is sufficient and I don't see why you are bringing it to my attention anyhow." I said, "Dr. Meyers, it is a very serious [81] thing that I am discussing with you at this time because it is beginning to shake my faith in the project, and in discussing with J. F. Simons, J. F. Simons gave me only one answer. He said, 'Yes, I know that Bill Broome is no geologist and if he opens his mouth again I will throw him out; but until such time pay no attention to the wind-bag; he will run himself out of gas.' "

And I said, "Dr. Meyers, if that is true, I would like to have your reaction to it and your answer." He said "Mr. Fisher, you are taking your instructions from Mr. Simons, and what he tells you to do, you do. I have nothing else to comment.

Q. Prior to that had you spoken to the defendant J. F. Simons about this same matter?

A. I did sir.

At the conversation with Mr. Simons I related what Broome had told me which was in substance what I have just said I told Dr. Meyers. Mr. Simon's answer was in substance what I have just said.

(Testimony of M. B. Fisher.)

I had a conversation with Mr. Simons in 1934 regarding my contract, and asked him to have the terms and promises placed in writing. He said he would at a later date, but that his partner, William A. Markowitz, was not in town, and he reminded me that he was a man of honor and that after all a contract was not necessary because it was worth only what the men behind it was worth and he pledged me his word as to my status and standing. I asked him if it wasn't time to call for my wife, reminding him that she expected to become a mother and he had promised that he would send for her. He replied that he did not have much money at that time, but said he was going to Los Angeles in a day or two and would contact my wife and arrange [82] to have her sent here and then he would establish a certain drawing account based on my earning at that time. He said he was going to California to raise more money.

I had a conversation once with J. F. Simons about the well. That was about the Christmas Season of 1934. There was nobody present except J. F. Simons and myself.

Q. And what was that conversation?

A. I told Mr. Simons that I had just been called a liar by one of my salesmen. He asked me why. I said, "I just mentioned the fact that our hole was progressing quite favorably, down several hundred feet, with good signs, good showings." The salesman says, "You are a liar. You have no hole. I understand that the rig had to be skidded because

(Testimony of M. B. Fisher.)

you had lost your hole." "I ask you, Jim, is that right?" And he said "Why, it is none of your business, Bert. We won't give any information out with respect to the hole." He said, "Your duty is just to go back there and tell the salesmen that if they want any information that Mr. Broome will give it to them. From now on stay away from mentioning anything concerning the drilling. You just stick to instructing your salesmen how to sell and refer to them any questions they wish to know about progress, drilling or developing, they should refer it to Mr. Broome, or come to the meetings where Mr. Broome will go into the development aspect in its complete detail."

Q. And did Mr. Broome thereafter make any statement in connection with it?

A. Yes. Mr. Broome the next morning, I believe came into the meeting and at subsequent meetings of the public he made the statement that from now on until further notice we will not give any development of the well, due to the fact that it would give information to the major oil [83] companies who might use it to their detriment, and for that reason we ask the public and the salesmen on each occasion to have confidence in *his*, his company and the project; they were doing everything in their power and that everything was going well.

Prior to that time I had used a blackboard symbol in the shape of a thermometer to show the depth of the well, starting at zero and adding the number of feet as I was given the numbers by Mr. Broome

(Testimony of M. B. Fisher.)

and Mr. Simons as to the depth. I believe I had reached 300 feet and some odd feet at the time of the incident of which I spoke. Prior to a certain time in 1935 I was told by Simons and Mr. Broome that Simons was paying the bills and Broome said he had been authorized to buy whatever he needed. Thereafter Mr. Simons called me into his office where William Broome was present and instructed me to say that from now on all the bills of the development company were being paid by Dr. Meyers. I followed those instructions.

In introducing Dr. Meyers I said he was not only a man of ability and wealth, but the man who was paying all the bills and seeing to it that the Donny Boy well would be brought to a successful completion.

At one time in the early part of 1935 at the Olympic Hotel, Seattle, I had a conversation with defendant Meyers relative to what William Markowitz had told me.

Q. And what was that conversation between yourself and the defendant Meyers?

A. I told Dr. Meyers that I had just had a conversation with William Markowitz, and I told him what William Markowitz told me. I said that William Markowitz had met me in the tap room of the Olympic Hotel the night before and said to me, "Fisher, I know that you haven't put all your [84] efforts behind the project lately. I know, in fact, that you are discouraging quite a few of the salesmen; I know that you are making derogatory re-

(Testimony of M. B. Fisher.)

marks about myself and my company. I want to tell you a little story. He said: When we had a company down South my associate, Mr. Simons and I had in our employ a gentleman that was commencing to make a little trouble. I called that gentleman in one day and told him that if he wouldn't desist making trouble I will be forced to make a telephone call to Kansas City where I had formerly resided and where I had a very large acquaintance among what some people call "tough boys", and I am just giving you the warning that unless you quit——"

Mr. Johnson: I object to that, if your Honor please, as being incompetent.

Q. (By Mr. Hile): This is what you told Dr. Meyers? Is that it?

A. That is what I told Dr. Meyers.

Mr. Johnson: Yes, but this is what happened some other place. That wouldn't have anything to do with this case.

The Court: Objection overruled.

Mr. Johnson: Exception.

The Court: Allowed.

Q. (By Mr. Hile): Proceed Mr. Fisher.

A. "And this gentleman did not see fit to quit, so that he did make that call and low and behold a few weeks later the gentleman ceased to make trouble for anyone at all. 'Now Mr. Fisher, you are a father, you are a husband, you love your wife and you love your family. Unless you quit saying the remarks you are saying about our firm being

(Testimony of M. B. Fisher.)

no good I will be forced to make a second call to Kansas City, and your children might be fatherless.' [85]

I said, Dr. Meyers, what do you think of that conversation?" Dr. Meyers said, "Mr. Fisher, if Mr. Markowitz told you anything, you can do a lot better than to—Oh, you can do no worse than heed his remarks, because Mr. Markowitz has a habit of saying what he means." I said, "Dr. Meyers, then according to that, you are in accord with the statement made by him that he threatened me?" He said, "I am in no accord with anything. I don't tell you anything except that Mr. Bill Markowitz usually does what he says; and from now on I wish you would refrain from speaking to me about those matters or any other matters, and it is best for you to go about your business and be a good boy."

After that conversation I remained with the company for about six weeks or two months, but did very little active work. I had a conversation with Markowitz and Simons regarding continuation of my employment in the first part of 1935. That was before the conversation I have just related. I was called into Mr. Simons' office and handed a letter and said this is not the contract I was promised. My contract was to give me 5% overriding commission on the entire sales of the Peoples Gas and Oil Company, while this merely recites that I and Derby, or Sam Markowitz are partners as managers of the Seattle office alone, sharing equally in a 5% overriding on the sales of the Seattle office. I asked

(Testimony of M. B. Fisher.)

Simons if he recalled that conversation, and he said he did not and Markowitz remarked, "Mr. Fisher, this is the only contractual relationship that I know existed, and this is the one you will either sign or get nothing at all." I said, "Gentlemen, I will sign this, but I tell you now that from this minute on I am going to look for something else and I am going to fight to try to get what is due me." [86]

I definitely told them at that meeting that I was looking for something else. In the early part of May on the advice of my attorney I wrote, or dictated a letter of resignation pointing out my reasons. The letter was dictated at the attorney's office and it appears that it was not mailed, although I signed it. A few days, or a week later, I was called into Mr. Simons' office and given a letter discharging me. I said, "It seems rather peculiar, I sent you a letter of my resignation some several days ago and was wondering why you were continuing my employment." He said, "No such letter was received. You are discharged." Thereafter I wrote a letter tendering my resignation. I believe it was April or May, 1935, when my relationships with the company were finally terminated.

I mentioned four deep and four shallow wells to be drilled. Thereafter Mr. Simons instructed me not to dwell upon that aspect. He called me into his office one morning in the fall and told me to confine my talk with the salesmen respecting drilling operations to the statement that an adequate test would be made by drill; that if the first hole came

(Testimony of M. B. Fisher.)

in dry they would immediately start another and another and continue until there was absolutely no further need for drilling and if oil was found they would continue until there was at least one well for every forty acres. After these instructions I made such statements to the sales force.

At the sales meeting and breakfast at the Gowman Hotel that I have previously mentioned when I introduced Mr. Broome I said he was the man who had helped McKim Hollins, a noted petroleum engineer and geologist in bringing in the largest field in a basaltic region in the world. I explained that the Tampico field in Mexico was brought in after considerable hardship under approximately the same conditions as [87] Frenchman Hills, both structures being overlaid by a heavy region of basalt. I said that Mr. Broome was well qualified to be in charge of the drilling operations because of his experience with McKim Hollins in bringing in the fabulous well flowing over a hundred and some odd thousand barrels daily in Tampico, Mexico.

Cross Examination

By Mr. Johnson:

I might have said some other things regarding Mr. Broome's ability as a geologist and petroleum engineer, but I do not recall anything else.

I was convicted in Detroit for violation of bankruptcy laws and given a sentence of three months suspended. In an application for Broker's license in California I denied that I had ever been convicted of a crime.

(Testimony of M. B. Fisher.)

In my conversation with Mr. Markowitz that I have spoken of which we had in the tap room of the Olympic Hotel, that was possibly February or March, 1935. It might have been latter part of January. We were sitting at one of the tables in the room. I couldn't say how many people were in the room. I believe it was the next day that I told Dr. Meyers about it.

I did not testify in the last trial to any conversation I had with Dr. Meyers concerning Bill Broome. I was not asked about it. I testified now for the first time regarding it because they asked me the questions direct.

I am under a Federal Indictment now at Portland, Oregon. It is under the Federal Housing Administration Act with which I am not quite familiar. I am not testifying regarding these conversations with Dr. Meyers because I hope to receive some consideration from the Government, absolutely not.

I was indicted in first indictment in this case. Subsequent to testifying in this case on its previous trial the indictment, at the request of Mr. Simons was dismissed. Defendant's A-16 [88] is the second letter of resignation which I referred to, that letter was sent by registered mail. The previous letter was written a week or two earlier about May 5, or 10, or something like that. I had a conversation with Mr. Simons regarding it at the time he handed me his letter.

This letter marked Exhibit A-16 was mailed on

(Testimony of M. B. Fisher.)

May 27, according to the post mark. On the same day a letter was written to the company by my attorney demanding wages which I claimed I had coming.

Exhibit A-17 is the letter written by Mr. Hyman, the attorney.

I did thereafter bring suit against the Peoples Gas and Oil Company. If that states that I had been discharged I did not notice it. I may have signed the original complaint if that was the procedure.

Q. (By Mr. Johnson): Calling your attention particularly to paragraph 3 of this complaint, in which it sets forth "That on the 20th day of May, 1935" you received a notice from J. F. Simons, President of the Peoples Gas & Oil Company, "that your services were no longer required." Nothing was said in this complaint as to your having resigned theretofore. Will you still say that you resigned or that you were dismissed?

A. I recall that now, if you please. I recall that was the advice of my counsel to leave matters——

Q. Just answer my question.

A. I did answer it. I am answering your question. It was on the advice of my counsel that we leave that as it stands and it would further my interests in collecting the money that I be discharged.

Mr. Johnson: I move to strike that.

The Witness: That is exactly the reason, sir. I recall it very vividly. [89]

(No ruling.)

(Testimony of M. B. Fisher.)

Q. And in that complaint you sued for some \$6,100.00, didn't you?

A. I believe that was the amount sir.

Q. You finally settled for what?

A. Three hundred and something.

It is not a fact that in my conversation with Dr. Meyers and the other men they told me that Meyers was interested in the Cascade Tunnel primarily. They said Dr. Meyers would attempt to build the Cascade Tunnel as soon as he had established sufficient political strength and after oil was brought into Washington; after he had finished the oil project he would attempt the Cascade Tunnel.

My conversation with Mr. Broome, which I later related to Mr. Meyers, was the latter part of October or early November, 1934. I did continue thereafter as sales manager for the organization at \$125.00 per week and I never said to anybody except Mr. Meyers and Mr. Simons what Broome had told me. I did notify a lot of salesmen and sales managers, Mr. Engler and Mr. Christensen among them, in the early part of 1935. I testified that statements had been made by Mr. Simons regarding drilling eight holes, four deep and four shallow. That was repeated at salesmen meetings in Seattle by myself and by Mr. Broome, and also at public meetings. Mr. Christensen was not employed at that time. It was not mentioned in Mr. Christensen's presence, so far as I know. We were told by Mr. Simons to change our story.

(Testimony of M. B. Fisher.)

After severing connections with the Peoples Gas & Oil Company I went to work for the Northwest Gas & Oil Properties, of which I was a one-third owner, I believe. The other owners were Arthur Sereth and Lewis Wagner. They started operations shortly after my dismissal from the Peoples Gas & Oil Company. It may have been in September, 1935, or before, or after that time. [90]

Redirect Examination

By Mr. Hile:

I bear no ill will toward the defendant Meyers.

Re-Cross Examination

I am not trying to help myself with the government in testifying here. No one has offered me any immunity or anything by virtue of my testimony either in this case or in the case in which I am under indictment.

It is true that I testified in the previous trial that I was not guilty of any charge against me up to October or November, but after that I probably was guilty. That is right. If I continued I might have been guilty and therefore I asked for no immunity whatsoever. [91]

L. J. TUSING

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I live in Bellingham, Washington. At present I operate an insurance agency and act as transportation supervisor for a shipyard. From about April 1, 1935 until June 1, 1937 I was connected with the Peoples Gas and Oil Company as a salesman and as manager in charge of the Aberdeen office of the company. I came from Boise, Idaho at the suggestion of a friend named Cedarland and on the day of arrival I attended a morning sales meeting here in the Tacoma office, that was March 25, 1935. None of the defendants were present. At the evening meeting Mr. Broome spoke, but to my knowledge no other defendant was present.

Thereafter I attended sales meetings regularly five mornings a week and on Monday night I attended public meetings. I heard Dr. Meyers speak I believe, in May of that year in the Elks Temple at a Monday evening meeting. Mr. Broome made the usual report of progress of the well and explained the program in general, but the high spot of the evening to me was the introduction of Dr. Meyers, whom I had not seen before. Broome said he had something in store for us that night and wanted to introduce a man who perhaps more than anyone else had made the program possible, as he was a retired man of considerable wealth in a posi-

(Testimony of L. J. Tusing.)

tion to pursue his hobbies and his hobbies were the development of natural resources. He enlarged on that theme and said, "I give you my friend and your friend, Dr. H. Harry Meyers." [92]

He said one other thing. He mentioned Meyers as a principal in the Strauss Engineering Company, who had had a very important share in the completion of the Golden Gate bridge, "which stood as a monument to man's engineering genius."

Dr. Meyers spoke briefly and said that he was happy to have as his partners so many fine people in the state that he felt kindly towards, especially towards Tacoma, that this was one venture that would be concluded because he was backing it with his entire personal fortune. Either he or Mr. Broome said that Dr. Meyers' wife was a former Tacoma girl. Mr. Broome spoke at all the meetings and quite frequently one of the others would be there.

Q. Do you remember any of the statements that he made at several of the meetings, or that you know he made?

A. I remember one statement that has always stuck with me, that "Oil is speculation, and we think this is oil. If you can't afford to speculate, keep your money in your pocket; we don't need it; but if you wake up some fine morning and hear the newsboys shouting 'Oil in Washington!' and your neighbor who speculated gets up and starts his trip around the world, you just take a couple of aspirins and go back to bed, because you couldn't

(Testimony of L. J. Tusing.)

afford to gamble." That was the theme of the meetings and the theme of my sales talks.

Q. Did he ever say anything about Dr. Meyers at those meetings?

A. Yes. Dr. Meyers was mentioned at nearly every meeting.

Q. Do you recall what was said about him?

A. Not the exact words, but similar to the introduction that we were very fortunate to have a chance to sit on the same side of the table with the man who was furnishing [93] the money. That this deal was financed by Dr. Meyers, and therefore it was not going to run out of money before the job was done; that our contributions were not important financially; the deal was financed before we came in. (462)

I recall a meeting when the first price raise, after I begun work for the company, was discussed. The raise was announced on July 3, as I recall the date, and the price was to be increased from \$22.50 to \$25.00 an acre. We were told that now was the time for us to reap the harvest by calling back on those people whom we had partly sold those, whose resistance had weakened, now was the time to give them their opportunity to get in before the price went up, and thereby earn for themselves part of the reward for the oil consciousness we had created. That was the general theme.

A. I recall, the branch managers were all there and Mr. Markowitz and Mr. Simons were in charge of the meeting. There may have been others,—

(Testimony of L. J. Tusing.)

There were others of the home office personnel in and out, but these were the two that I recall.

Q. And do you remember what was said?

A. Not in its entirety.

Q. Well, do you recall what was discussed?

A. We were discussing another price raise.

Q. What was said about that?

Mr. Simon: May I inquire on voir dire?

Q. Was the defendant Meyers present on that occasion? A. I don't believe he was.

Mr. Simon: If the Court please, at this time I ask—— [94]

The Court: I have ruled on that so repeatedly, Mr. Simon. It will be the same ruling and exception.

Mr. Simon: At this time, if the Court please, I ask that the jury be instructed that these statements made by others, not in the presence of Mr. Meyers, should not be considered against him unless they are satisfied that there is a conspiracy.

The Court: Very well. The jury will be instructed at the proper time concerning the law in this case.

Proceed.

Mr. Simon: Exception.

The Court: Proceed.

In October, 1935, I was transferred to Aberdeen and put in charge of that office. I talked with William Markowitz regarding it. He gave me a general outline of what he expected of me as sales

(Testimony of L. J. Tusing.)

manager of that office. My job would be to enroll and instruct salesmen, teach them how to work and keep them working. He stressed that there should be no misrepresentation, but that the fellows should tell the story based on the printed literature furnished by the company or statements made by the officials, either to them or at meetings.

I was with the company in Aberdeen until the office closed about the first of June, 1937. My maximum crew, I think was twenty. I followed the instructions given me by Mr. Markowitz and others of the principals.

Plaintiff's Exhibit 36 is a bulletin called the "flight bulletin" furnished us. These came every morning from the Seattle office. I would familiarize myself with the [95] contents and then use the material in the morning sales meeting and post a bulletin on the board for the benefit of the salesmen and others.

Exhibit 37 is another such bulletin.

Thereupon plaintiff's Exhibit 36 and 37 were admitted in evidence.

(Testimony of L. J. Tusing.)

PLAINTIFF'S EXHIBIT No. 36

Daily Flight Bulletin No. 49-A

Friday, October 4th, 1935

To: Cols. Cedarland

Engler

Christenson

Toub

From: F. C. W. Markowitz

P. G. & O. Skylights

The following item appeared in the San Francisco
"Examiner of September 30th:

"Historic Spanning

"The Golden Gate, for a long time believed to be an insurmountable water barrier, is now spanned for the first time in its history with a complete crossing, from one bridge anchorage to the other.

"Workmen this week completed the task of erecting the cat-walk or foot bridge over which the bridge erectors are walking dry shod from shore to shore. Work this week will be concentrated in the erection of the quarter span cross bridges, connecting the two main cat-walks, and the remainder of the storm cable system."

And, today I am in receipt of the following telegram from Jimmie Simons, who is now in San Francisco:

"Just Returned From Trip To That Colossal and Tremendous Golden Gate Bridge Stop What An Achievement For Man Stop Made Me More Proud Of My Association With Doc Meyers Stop

(Testimony of L. J. Tusing.)

Every Washingtonian Should Be Proud Of The Fact That The Doctor Is One Of Them Stop Our Activities And Frenchman Hills Are Well Known And Being Thoroughly Watched By Petroleum Industry Here Stop Your Reports Received Stop Congratulations And Keep Up Good Work Regards."

I am quite sure that we are all equally proud of Dr. Meyers . . . and the erection of the mammoth Golden Gate Bridge is merely further proof of the old adage that What Man Can Imagine He Can Do.

And . . . now . . . Frenchman Hills!!!

The connecting link between Prosperity and the People of the State of Washington!

Did you know that one of the leading boulevards in Los Angeles, California, has an oil derrick erected in its center, and that it gives forth "black Gold" every day? The tower was erected in the parkway when oil was found in the middle of the street. This particular oil operation has been commented on in newspapers and other periodicals all over the world.

* * * * *

The following article appeared in the Seattle Sunday "Times" of Sunday, September 29th:

"Oil Production Gives
England Hopes of Boom

"London, Saturday, Sept. 28—(U.P.)—That Britain may be on the verge of a vast industrial expansion similar to that based a century ago on

(Testimony of L. J. Tusing.)

coal and iron, is indicated by the latest developments in the oil industry.

“Since the passing of the Petroleum (Production) Act nearly 50 applications for oil prospecting licenses have been made to the Mines Department, and geological experts are busy in many parts of the country.

“At Three Bridges, Sussex, the N. M. D. Syndicates, Ltd., has sunk a well to the depth of 2,000 feet, and machinery is being installed capable of sinking it 7,000 feet. Engineers are confident of finding oil in commercial quantities.”

* * * * *

October - - A Banner Month!

* * * * *

Remember . . . A Contract a Day
Keeps Worry Away. Try It and See!
Your Standing

		Thursday	To Date
Col. Cedarland,	Yakima	644	19,303
Col. Engler,	Spokane	364	15,172
Col. Christenson,	Tacoma	126	14,784
Col. Toub,	Seattle	224	10,486

* * * * *

Ice-Breakers

Welcome To The PG&O Organization!

Mr. Ray Woods	—	Spokane
Mr. Charles Arnold	—	Spokane
Mrs. R. D. New	—	Yakima

. . . . And Congratulations!!

* * * * *

(Testimony of L. J. Tusing.)

Roll of Honor For Thursday

Yakima

W. J. Else

R. B. Fosburgh

S. T. Wiprud

Spokane

Roy Ingalls

M. D. Carter

Walter Grob

H. A. Schultz

Seattle

James Kerr

C. Hartnett

* * * * *

October - - A Banner Month!

* * * * *

Loyal Service

Makes a Gener-

ous Paymaster!

Thought For Today

The Complaint of some Managers that it is hard to get the right class of men sums up, we find, in the fault of placing too much dependence upon advertising, and in overlooking the recruiting power that rests with the men already enrolled.

Where Managers have put their producers to work, recruiting new men as well as clients, the results have been reflected in an immediate and constantly growing expansion of those particular sales organizations. Co-operation, not Competition, is the life of trade, and it is plainly for the best interests of every man to do all things possible to bring his office up to standard, both in man-power and production.

I wish every Sales Representative would keep

(Testimony of L. J. Tusing.)

this matter of man-power uppermost in his mind from now on. The Program is well on its way, and we must have more men of the same kind as yourselves; men who mean to succeed, and who value this Company as their great opportunity.

The work of recruiting new men and women from among your friends and acquaintances, (or the general public with whom you come in daily contact), should not interfere with your work of selling. On the contrary, nothing will put you on a keener mental edge, nor impress "P. G. & O. Service" with its various phases on your mind so thoroughly as to sell "The P. G. & O. Idea" to a man you hope to bring into the organization. You will uncover more hidden points of excellence and arouse your enthusiasm to far greater heights through this particular effort than you ever dreamed of. The work of recruiting should not interfere with your work of selling—it Must not; the two should be ideally blended for the benefit of both yourselves and your Company.

I have in mind one office and one man in particular, who not only gets business, but gets new men, too. This is loyalty; it is the right spirit; it is "P. G. & O. Zeal;" it is elementary training for a Sales Managership. Do not forget:—**Selections For Promotions, In Most Instances, Are Made From The Best Going And The Fastest Growing Office.**

So help build your office, by bringing to your Manager men who will measure up to our require-

(Testimony of L. J. Tusing.)

ments. Then help train these men and develop the P. G. & O. spirit which we know will win.

Success lies in mutual service. In this way, you advance yourself; advance your Company; and become a really useful member of this organization.

WILLIAM MARKOWITZ,
Flight Commander.

Post On Your Bulletin Board

P. G. & O. Ten Commandments

I. I will be a loyal and faithful P. G. & O. Representative.

II. I will not sell any but P. G. & O. Service.

III. I will not take the name of P. G. & O. in vain.

IV. I will ever remember the P. G. & O. Purpose and keep it holy.

V. I will honor the Company that gave me a chance to serve.

VI. I will not kill or waste time.

VII. I will tell the Truth about the P. G. & O. Program, and adhere to a sincere and conscientious presentation at all times.

VIII. I will be prompt at Morning Meetings.

IX. I will not bear false witness against my Company nor any member of its staff.

X. I will not violate the P. G. & O. Ideal, nor suffer it to be done by another if in my power to prevent.

* * * * *

(Testimony of L. J. Tusing.)

Post On Your Bulletin Board

What You Owe Us

It is a fundamental of the law, I believe, that a contract between two parties is not binding unless the contract binds Both.

The parties need not necessarily be bound equally, one may be bound for a great deal more than the other, but it is not binding as a contract unless there is some obligation on both sides.

The same principle is true all through business. Associates or co-operators in any business owe an obligation collectively to each individual in the organization, and each individual owes an obligation to his associates and to his organization.

I have a deep feeling of responsibility in the thought of how great an obligation the P. G. & O. Program owes to its loyal supporters. It is my purpose to see that the Program lives up to these obligations.

We want to render every aid and assistance to all members of the Sales Organization to make their work and lives a success. I believe all will agree that we are doing this by every means and method we can devise.

In return, I feel that each member should assume a personal obligation towards his organization, which he considers to be sacredly binding upon himself. This obligation should include the spirit of loyalty to the Company. A Willingness To Fight For The Organization That Is Fighting For You.

There is the further obligation to work. A tre-

(Testimony of L. J. Tusing.)

mendous undertaking involving a large capital investment is back of you, and there are dozens working constantly to make it as easy as possible for you to make good. You owe them in return the best efforts you can possibly put forth.

There is the obligation to support the ideals and principles for which the P. G. & O. Program stands. To Tell The Truth And Nothing But The Truth! "Bad" contracts are worse a thousand times than no contracts.

There is also the obligation to keep yourself, personally, up to the mark in your living—in your appearance and in your associations. I believe we have as clean an organization and as fine a bunch of men as has ever been assembled. I want to caution you against carelessness in the things that are seemingly small, but that count so much for your success and for the future of the P. G. & O. Program.

The people you meet judge You and judge the P. G. & O. Program by your appearance and by the way You live. Appearances are deceitful. Nevertheless, people Do judge by appearances, and as long as we know this to be true, we each owe it to the others to keep our appearance up to "scratch."

I once heard it said that a nickel's worth of shoe polish would come nearer to making a man a gentleman than a thousand dollar diamond. Clean hands, well-cared for nails, clean teeth and well-pressed

(Testimony of L. J. Trusing.)

clothes do not make a man a salesman. Careful attention to these things certainly do help a lot.

* * * * *

October—A Banner
Month!!

[Endorsed]: Filed Oct. 12, 1942.

PLAINTIFF'S EXHIBIT No. 37

Col. L. J. Trusing

Daily Flight Bulletin No. 57-A,
Monday, October 14th, 1935.

To: Cols. Cedarland
Engler
Christenson
Markowitz
Toub

From: F.C. W. Markowitz

P. G. & O. Skylights

The magnificently-inspired Trojans of Tacoma, following up their excellent progress of 1,036 miles on Friday, cracked through the P. G. & O. skies on Saturday with an earsplitting roar . . . and the heart-warming and pocket-lining progress of 518 miles resulted for the day.

Their able pilot, Col. Christenson, himself awakened to the tremendous opportunity which awaits them for heroic accomplishment, has mapped out a

(Testimony of L. J. Tusing.)

series of mighty power dives, which he earnestly declares are bound to put his Squadron on the top of the heap. The "power dive," as you all know, is one of the most exciting and breath-taking feats in all aviation, and should Tacoma succeed in performing this series of powerful moves without mishap, they will have a splendid chance to come out in front in the World Flight.

The new slogan in Tacoma is "It Can Be Done! . . . It Must Be Done! . . . It Will Be Done!"

A soul-stirring slogan such as this is worth anybody's "Amen," and not being in the parsimonious class, we not only offer two resounding "Amens," but throw in eleven "Hallelujahs for good measure. Also well-deserved and heartfelt congratulations!

* * * * *

Meanwhile and there is always the "Eternal Meanwhile" with which even the best of us must reckon. . . . flying on the far-distant horizon, and like an ominous shadow insofar as the competing squadrons are concerned—completely obscuring even a glimpse of the Golden Portals of Victory, are the Superb Vikings of Yakima. Of course, they can be dislodged from this enviable position, but, boys, it will take a mighty bombardment of contracts to do so, and we are watching with tremendous interest the highly-touted and spectacular "power dives" of Tacoma.

Spokane Flyers, under the intensely enthusiastic leadership of Col. Engler . . . an enthusiasm shared by the entire Spokane Squadron . . . and largely gen-

(Testimony of L. J. Tusing.)

erated by Tacoma's recent bid for leadership . . . are Pounding . . . Pounding . . . Pounding . . . to the end that they will not be outdone by Tacoma. Their plans are being kept quietly under cover, but this week will tell the most exciting story of the entire P. G. & O. Flight . . . a story that we know will be interwoven with dramatic and highly-gearred achievements on the part of many individuals and crews.

* * * * *

Col. Markowitz, of Seattle, rushed back to join his squadron, as he wanted to give them at this time the full benefit of his counsel and inspiration. The Colonel makes no secret of the fact that this is the first time in his entire career that he has been last in any race, but fervently expects to push up ahead and be somewhere "in the running," as he puts it, at the finish. Welcome home, Col. Markowitz, and between you and Col. Toub, the musical flutterings of contracts should be the only sound to disturb your otherwise serene and peaceful disposition.

* * * * *

All Colonels met in joint session with their Flight Commander, and General J. F. Simons, Commander-in-Chief on yesterday, and ways and means were discussed to make the progress of every P. G. & O. Flyer more speedy and remunerative. General Simons addressed the meeting. The General is highly enthusiastic over the attention which the P. G. & O. Program is receiving everywhere, and also brought back the gladsome tidings that Field Marshal Meyers would be in Seattle the latter part of this week. This "Napo-

(Testimony of L. J. Tusing.)

leon'' of Construction and Upbuilding will, undoubtedly, bring with him his usual cheerful outlook, and even greater plans for future accomplishments in the State of Washington.

* * * * *

And Remember

October—a Banner Month!

Ice-Breakers

Congratulations Upon Your First Sale, and
Welcome to the P. G. & O. Organization!

Yakima

Lizzie H. Cruise

* * * * *

Your Standing

		Saturday	To Date
Col. Cedarland,	Yakima	420	23,128
Col. Engler,	Spokane	168	18,354
Col. Christenson,	Tacoma	518	18,116
Col. Markowitz,	Seattle	182	12,418

[In pencil, third column]: 77

* * * * *

Roll of Honor for Saturday

Yakima

W. J. Else

R. B. Fosburgh

Spokane

Henry Krueger

S. M. Simpson

Tacoma

Lew Ballatore

J. C. Whitesel

A. R. McColley

H. A. Pelle

(Testimony of L. J. Tusing.)

Seattle

L. A. Bellosillo

October—a Banner Month!

Thought for Today

This I Resolve to Do:

I, a man, being of sound health and disposing mind, hereby set down these things I have resolved:

I will profit by the experience of others and will wait to learn by my own experience.

I will be reasonable. From every human I encounter, I will try to learn something. . . .

I will decide by my intellect what my tastes ought to be and make myself like the right things. I will put away the weakling's argument that "I can't help my likes and dislikes."

I will keep clean in body and mind.

I will not accept as a satisfactory standard what the majority of people are and do.

I will take from the world only the fair equivalent of that which I give to it.

I will never take revenge, harbor no grudges and utterly eliminate my spirit of retaliation.

Life is too short for destruction; all my efforts shall be constructive.

I will not engage in any business or sport that implies fraud, cruelty or injustice to any living thing. I will hurt no child, punish no man, wrong no woman.

(Testimony of L. J. Tusing.)

In everything I do I shall strive to add a little to the sum of happiness and subtract a little from the sum of misery of all living creatures.

I will constantly try to make myself agreeable to all persons with whom I come in contact.

I will believe that honesty is better than crookedness, kindness is better than cruelty, truth is better than lies, cleanliness is better than dirt, loyalty is better than treachery, and love is better than hate or coldness.

I will trust my life and my career to an unfailing reliance upon this creed.

W. MARKOWITZ,
Flight Commander.

Post on Your Bulletin Board
The Success Thought

“If you want a thing bad enough

To go out and fight for it!

Work day and night for it!

Give up your time and your peace and your sleep
for it!

If only the desire of it

Makes you quite mad enough never to tire of it,

Makes all else seem tawdry and cheap for it,

Makes life seem quite empty and useless without it.

If you are willing to sweat for it,

Fret for it! Plan for it!

Lose all your terror of God or man for it!

If with all your capacity,

(Testimony of L. J. Tusing.)

Strength and sagacity,

Faith, hope and confidence, stern pertinacity,

If neither cold poverty, famished and gaunt

Nor sickness nor pain of body or brain will make

You turn back for the thing that you want,

If dogged and grim you besiege and beset it!

You'll Get It!"

* * * * *

In my Daily Flight Bulletin of Saturday, I stated in the article, "Knowing Why," that "there is no method I know of that will increase your sales ability and help you to advance more rapidly than to know each time you lose a sale—why you lost it."

That is true. But I would like to add that it is Equally Important—if not more so—to analyze each sale after you have Completed it, and find the reasons for having gotten the signature on the dotted line. There must have been some distinct line of presentation that you followed, in order to have sufficiently impressed your prospect so that he became a client. The same psychological trend that "worked" with that individual should be adhered to in calling upon the next, and improved upon, if possible.

It is also good for your mental attitude, the most important asset you have, to keep thinking success thoughts, and founding your success of today upon the successes of yesterday, rather than spending too much time pondering upon the failures which may have occurred.

[Endorsed]: Filed Oct. 12, 1942.

(Testimony of L. J. Tusing.)

I attended some meetings at the Home Office in Seattle called Manager's Meetings. I remember one in November, 1935. The branch managers were all there and Mr. Markowitz and Mr. Simons were in charge of the meeting. We discussed another price raise. And another thing was stressed, that other phases of the program were being held back because the salesmen were slow in completing this part. We were told that other jobs were waiting for us if we could only get this one done.

At the time of the price raise in July people purchasing were given options giving them the right to purchase equal amounts later after the price had been raised. I am not certain about the time limit after the price raise that they could buy at the old price.

I recall another managers meeting at Seattle in March, 1936. It was then announced that the sale of leases would be terminated as of April 15, 1936. I was rather dumfounded by the announcement. Mr. Simons said that the unsold portion of the leases would remain the property of the Peoples Gas and Oil Company; that it was a good enough investment to keep rather than take the necessary time to turn it into cash.

Another such meeting, I think, was in May or June of 1936. I recall Mr. Simons and Mr. Markowitz both explained the conversion plan, saying that a plan had been [96] prepared to raise the capital stock of the Peoples Gas and Oil Development Company from the original 640 to something over

(Testimony of L. J. Tusing.)

a million shares, each lease holder to be allowed to turn in his acreage on the basis of each share of stock for each acre of lease purchased. The plan was optional, not compulsory. We were asked as employees of the company to make our services available to those who wanted them and were furnished blanks for the purpose. That program did go into effect.

I personally had purchased leases, one for each member of my family and my wife's family. I converted only my own and my wife's.

I remember another such meeting at Seattle in the spring of 1937, when we were told of a change in the plans for the drilling operations under which there was a change in Dr. Meyer's obligations. It was announced that Dr. Mayer's reserved the right to repossess the equipment and finish the drilling if he thought it was not properly done. The Spokane manager, Mr. Engler, said "So, this is the fade out!" Mr. Markowitz and Mr. Simons took turns to show him that it was not the fade out.

At a later meeting in Seattle it was announced that a new program had been prepared which would carry development over the State of Washington and that because Mr. Markowitz and Mr. Simons wanted to tie in the Frenchman Hill program with the new one they had assigned their interest to a Board of Trustees for the benefit of investors in the new setup. What was called "participations" were to be sold and stockholders in the Frenchman Hills enterprise would be permitted to transfer their holdings into

(Testimony of L. J. Tusing.)

participations by purchasing a small additional amount of such participations. This was to give them a [97] share in the entire old and new enterprise. I do not recall the price of these participations. I was not particularly interested.

After acquiring my stock in the Peoples Gas & Oil Development Company I was never notified of any stockholders meeting. I never attended one and gave no proxy to anyone for voting any stock.

Plaintiff's Exhibit 38 for identification is a copy of an Aberdeen newspaper.

Q. The article that you have reference to is that portion which I have marked, is it?

A. That is right.

Mr. Saeger: I offer it in evidence.

Mr. Simon: I object to it as irrelevant and immaterial at this stage of the proceedings.

Q. (By Mr. Saeger): Did you use that article in connection with your sales program there, Mr. Tusing?

A. I posted it on the bulletin board and referred people to it when it came handy. I didn't use it particularly in my sales kit, no.

Q. Did you refer it to the salesmen?

A. Yes.

Q. How did you get this request to send copies to Seattle? A. How did I get the request?

Q. Yes.

A. Mr. Markowitz asked Mr. Hirsch if he had secured those copies of the paper. He said "I forgot it." He said, "Can't you do that, Tusing, it is only

(Testimony of L. J. Tusing.)

a block from your office to the newspaper office.” He directed me where, and I said I would be glad to do what he requested. [98]

And Mr. Markowitz said: “Please get a dozen copies and send them to me as soon as you can.”

Q. Where did this conversation occur?

A. In the Aberdeen office.

Q. And what Markowitz was that?

A. William.

The Court: The objection will be overruled. It will be admitted in evidence.

Article in Aberdeen paper admitted in evidence and marked plaintiff’s exhibit 38.

Mr. Sager: I would like permission to read this to the jury.

Mr. Simon: I object, your Honor, upon the ground that the article is hearsay and incompetent as such.

The Court: Read some salient features, if you feel there are such. I don’t want to take the time to read it all.

Mr. Simon: Exception to your Honor’s ruling.

The Court: Yes, exception allowed for all adverse rulings, and you can take them, too, in order to save the record. Proceed. “Portion of said article read by Mr. Sager, the article reading in part, as follows:

New Company Plans Big
State Oil Tests; Boom
Likely if Oil Is Found

(Testimony of L. J. Tusing.)

Production of oil and gas in Washington—if there is oil here—would do more to pull the state out of the throes of depression than any other type of development, J. F. Simons, of Seattle, president of the Peoples Gas & Oil Company, predicted today on a visit to Aberdeen. His company will open an office tomorrow in the Becker building, with H. Hirsh of Seattle in charge of the branch. Mr. Hirsh will make his home here.

The company is starting a state-wide development program, and has opened branches in Spokane, Tacoma, Yakima, Aberdeen, Vancouver, and Port Angeles. The company employs 400 people in the state.

It is not the purpose of the company to obtain funds for the purpose of drilling oil wells, but to enlist the support of the public for protection of a home industry if oil and gas is dis- [99] covered, Mr. Simons said. The money for drilling operations has already been appropriated.

Already Financed

The development program is well financed, and is being undertaken by the Peoples Gas & Oil Development company, an affiliated organization, of which W. A. Broome of Seattle is president and engineer in charge, and Dr. Harry Meyers is vice-president. Dr. Meyers is the man responsible for construction of the Golden Gate bridge in San Francisco, Mr. Simons said.

*	*	*	*	*	*	*
*	*	*	*	*	*	*

(Testimony of L. J. Tusing.)

The venture is well financed, Mr. Simons said, with money already appropriated to bring the test well to completion, and outstanding geological opinion is that oil and gas will be found in commercial quantities."

* * * * *

Cross Examination

By Mr. Simon:

This clipping (Exhibit 38) appeared while the lease sales were still going on.

The drilling operation on Frenchman Hills was going on. I visited the well several times. There was rotary equipment in place. I saw the hole. I did not measure it, but believe it was 2 feet in diameter. The drilling continued more than a year after the sales campaign ceased, and when I was there they were drilling 24 hours a [100] day.

The participations were purely optional and on the new setup the Development Company received the drilling equipment from the Drillers, Accounts Receivable of something in excess of \$600,000.00 from the Peoples Gas & Oil Company.

The Drillers gave up 10% of their royalty of 22½% and the Peoples Gas & Oil Company were given 1% for each \$30,000.00 unit of collection, but in no event was the percentage to exceed 10%.

I told everybody, including my salesmen, not to represent this project other than as speculative, and that only the drill could tell the story and what was under the basalt was anyone's guess.

(Testimony of L. J. Tusing.)

Re-Direct Examination

By Mr. Saeger:

Q. Mr. Tusing, did you say anything either in your representations to your own customers or to your salesmen as to the minimizing of the speculation in this matter? A. I did.

Q. What?

A. That ordinarily a speculation of a development nature, in my experience, ran foul of shortness of money before we had a chance to find out whether we had a legitimate speculation or not; that I was attracted to this [101] one and thought they would be because of the fact that we had overcome that hurdle before we got to it, we were completely financed.

Q. How? A. By Dr. Meyers.

Q. You stated that the only information you gave out was what was contained in the bulletins and what you heard from the officials of the company. Did you also use news articles? Or did the salesmen use news articles?

A. We did only, to my recollection, when they were sent us from the office. We didn't pick news articles ourselves; we didn't go gathering for material to use. We were often furnished by the home office clippings, and one time I believe we got a broad sheet with many clippings, photostats of them.

Re-Cross Examination

By Mr. Simon:

Q. Mr. Tusing, you recognize plaintiff's Exhibit

(Testimony of L. J. Tusing.)

32 as being the photostatic copy of the newspaper items that counsel interrogated you about?

A. It looks very much like one I had in my kit.

Q. You represented, did you not, that those newspaper items were merely what the press of the state thought about the Peoples Gas & Oil Company and the Peoples Gas & Oil Development Company?

A. Yes, I think so. I stressed them pretty heavy as being that.

Q. Yes, you didn't say that everything that these newspapers might have said was the fact?

A. No, but to be honest, Mr. Simon, I didn't question any of the statements. [102]

Q. You realize, of course, that a newspaper account of anything isn't a very accurate thing to go by?

A. That is right.

Q. You certainly didn't tell your salesmen, did you, where there was any conflict between what these newspaper stories carried and the instructions that they had received at the sales meetings or in their sales kit or in their instructions from you, that they should go on what the newspaper,—some newspaper clipping said, rather than on these other instructions?

A. No, no. On the contrary, I used that to show how conservative were our instructions. Newspapers often say better things about us than we say ourselves. [103]

ROY H. CALKINS,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live about twenty miles from Roseburg, Oregon. In June of 1935 I was employed by the Peoples Gas and Oil Company. I purchased a lease the day I became a representative. I was stationed as salesman this side of Olympia and sold at Kelso, Longview, Castle Rock, Aberdeen, Hoquiam, Montesano and other places. I was hired by Mr. Christensen. He gave me a kit and a lot of papers, photographs and forms.

After I became a salesman I attended both sales meetings and public meetings. The public meetings were held in the Elks Temple at Tacoma. The audience became so large they moved to the Odd Fellows Hall.

I think I attended two meetings at which defendant Meyers spoke. One was in the Elks Temple and the other in the Odd Fellows in Tacoma.

Q. Do you recall what Mr. Broome said in his talk?

A. He said Dr. Meyers was very able, financially, to drill and produce oil, if there was oil there in Frenchman Hills; he had plenty of money. He also stated that Dr. Meyers was the biggest little man there was in the world; he had built over 400 bridges throughout the world, large bridges; that he had built or dug several tunnels. As a matter of fact, he stated two tunnels in the Hudson river; that he

(Testimony of Roy H. Calkins.)

was at one time director of the largest bank in [104] London. The way he got his name of "doctor" was when he was building a bridge in some foreign country,—I don't remember the name of the country. The natives of that country were taken sick with some kind of a disease,—I don't know what it was called; but he administered something to them and cured them all, and that is the way he got the name "Doctor Meyers."

Q. Do you recall anything else that Mr. Broome said at that time?

A. I don't recall anything right now.

Q. Do you recall what Dr. Meyers said at that time, if he said anything after he was introduced by Mr. Broome?

A. He said he was very glad to see so many people as there was there, hoped that they were all as interested as he was; that all the money that he would make or receive after he got the money that he had put into it, would go to charity, worthy charity in the state of Washington. He said he wished to do the development of the different projects, or different resources in the state of Washington in honor of his wife, because his wife was born in the city of Tacoma.

I do not think that Dr. Meyers mentioned the Golden Gate Bridge at that time, but Mr. Broome did.

Q. Do you recall what, if anything, Mr. Broome said at that time in that connection?

A. He said Dr. Meyers had been the sponsor of the Golden Gate Bridge, that he had fought the

(Testimony of Roy H. Calkins.)

railroad and ferry companies for a number of years, in order to get the privilege of building the bridge, and he finally organized a selling campaign and put salesmen out and sold bonds all over San Francisco; and by the people becoming interested in the bonds, they backed him up to the limit. That was [105] the way he got the Golden Gate bridge started, through his associate and partner, Strauss.

At the second public meeting at which I heard the defendant Meyers speak, he said he was going to finish drilling the hole on Frenchman Hills if he had to drill to China; that he was going to make Frenchman Hills as full of holes, if necessary, as a Swiss cheese, and when he had finished with the oil he was going to start the Cascade Tunnel; that he had been back in Washington and New York with data to get permission or instructions to go ahead with the tunnel.

After the last meeting mentioned I had a brief personal conversation with Dr. Meyers. He told me, "Well in just a year from now they will be driving across my new bridge." That was the Oakland Bridge, or the Golden Gate bridge. I could not say which one.

Defendants Markowitz and Simons told us a good deal about newspaper publicity. They said there would be a good deal in the newspapers and told us to watch them closely. They named the different papers that would contain articles that they had written or would have printed. I remember in particular the Wenatchee paper. They called our attention to that in the sales meetings.

(Testimony of Roy H. Calkins.)

I recognize Government's Exhibit 32, and the article from the Wenatchee Daily World in it. J. F. Simons told us that he was responsible for that. I used that article in making sales. I used them all.

Cross Examination

By Mr. Simon:

I sold practically 1000 leases during the period of my employment. If I sold 5 acres or $2\frac{1}{2}$ acres to a lease, I got \$12.50, but I did not make an income tax return for [106] that year, 1935. I heard Dr. Meyers speak at two meetings and Mr. Broome spoke once a week through the campaign. I recall that Mr. Broome said Meyers had built 400 bridges; that he, Meyers, was connected with the Strauss Engineering Company, which was the company that built the bridges.

I recognize defendant's Exhibit A-24 as containing instructions that I received. It speaks of Frenchman Hills leases as a speculation pure and simple. It says, "Do not undertake to insult the intelligence of your prospect by referring to the possible purchase of a lease on Frenchman Hills as a good investment." I carried out to the best of my ability the directions of the company indicated in this letter.

I understood that they were to drill one hole at a time to test the field. I never heard any assertion that they were drilling four wells at one time.

Re-direct Examination

By Mr. Hile:

(Testimony of Roy H. Calkins.)

Q. What, if anything, was said to you at sales meetings in regard to speculation and gamble? I will make it public meetings, rather.

A. They—Mr. Broome said it was a gamble; [107] if you had the money in your pocket, to take a chance; but if your children didn't have any shoes, not to take the money away from them and put it into this; because you might lose it; but there was 99% assurance of striking oil in that Frenchman Hills.

I gave my customers substantially what I was told to give them in the instructions from the officers and at public meetings. Mr. Broome told us that if we would bring the prospects to the meetings he would sell them. I found that to be a fact because I brought several of them to the meetings and they were sold.

Q. (By Mr. Hile): And in connection with the statement about a speculation and a gamble, was anything said about having your head examined, do you recall anything about that?

A. He said: "If you don't buy, you better have your head examined."

Re-Cross Examination

By Mr. Simon:

I do not remember whether or not I testified at the previous trial that someone said that chances of striking oil were 99%. [108]

METTA CALKINS,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am the wife of Mr. Calkins, who just testified. I attended public meetings of the Peoples Gas and Oil Company in Tacoma during the sales campaign, one at the Elks Temple and a number of others at the Odd Fellows Temple. I remember hearing defendant Meyers speak twice on the first occasion. Mr. Broome spoke first. His talk was similar to all of his speeches except that when he introduced Dr. Meyers he said, "Now, I am going to introduce you to the biggest little man in the world." When Meyers came out on the stage Broome went up to him and put his arm over his shoulder and made some remarks about Meyers being his friend and standby, but I cannot give the remarks in detail.

Meyers in his speech said that if oil was discovered on Frenchman Hills all that he made over and above what he had put in he would give to some worthy charity in the State of Washington. He said, "If it is there, we will get it if we have to go to China; and if oil is brought in on Donny Boy No. 1, we will make Frenchman Hills look like a Swiss cheese." Regarding defendant Meyers building bridges, I do not remember if he made the statements or if Broome did. Broome often spoke about Dr. Meyers and the Golden Gate Bridge. I think Broome in introducing Dr. Meyers spoke of what

(Testimony of Metta Calkins.)

Meyers had done and told us that he had built over 400 bridges. That he was one the world's greatest engineers and that his hobby was building bridges. [109]

Cross Examination

By Mr. Simon:

I heard my husband's testimony today. I do not know how many times I have talked with Mr. Swenson about my testimony. I think two or three times since yesterday morning. [110]

MRS. JEANETTE BROWN,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live at 209 East 27th Street, Tacoma. I put money in to the Peoples Gas and Oil Company and attended public meetings of the company. The first one in August or September, 1935. Government's Exhibit 41 consists of leases that we bought from the Peoples Gas and Oil Company. The same is true of Plaintiff's Exhibit 40. That is a contract that my husband bought.

Thereupon Plaintiff's Exhibits 40 and 41 were admitted in evidence.

I first heard Dr. Meyers in the Elks Temple in the fall of 1935. I think Simons was also present, I am not certain. Mr. Broome introduced Dr.

(Testimony of Mrs. Jeanette Brown.)

Meyers. He gave him quite a spiel. He said he was a big man and the man that was financing this program.

Defendant Meyers said we had nothing to worry about in putting our money in; that he was putting in his money and wasn't worrying about it because he had sent a geologist to go over Mr. Broome's work and that they were going to prove that structure. He said, "We are going to make that look like a Swiss cheese, if we have to go clear to China to get it".

I recall the meeting in the Odd Fellows Temple at which Dr. Meyers was present. I think that was along in the winter during the sales campaign. Mr. Broome introduced [111] Mr. Simons, but Simons did not speak. Broome told us how well the development was coming along, that Dr. Meyers was paying for all the machinery, that he was a wonderful man, and it was nice for us to have such a man behind our development, helping to develop the State of Washington for the benefit of the people.

Dr. Meyers said everything was coming along well and that Mr. Broome did not need to worry about money that there was plenty of money.

I attended meetings in connection with the conversion of leases into stock. Broome spoke and other defendants were present, Simons and Markowitz. They asked us to transfer our leases into stock because if the well came in we would be prepared to sell part of our stock.

(Testimony of Mrs. Jeanette Brown.)

With reference to the well Mr. Broome said, in the presence of other defendants, that they did not want to give out the log of the well because if they did the major oil companies would give millions to know, and they did not want them to know the log of the well, and how straight the well was and how deep. "It was just ready to be finished."

At one of the meetings Mr. Broome held up a check and said he had just received a check for \$30,000 from Dr. Meyers to pay for some machinery, and that Dr. Meyers had told him he need not hesitate one minute to call for money because he had plenty of it.

Q. And do you recall what Mr. Broome said relative to a speculation and a gamble?

A. Well, he said that anybody that didn't— He said he knew that the well was 99% finished, and was positive, he was sure that there was oil—99% sure of oil, and if anybody didn't put some money in better have their head [112] examined.

Q. Do you recall how much money you and your husband put into leases?

A. I think it was over a thousand dollars.

Cross Examination

By Mr. Johnson:

I read the letters which stated this proposition was a gamble and speculation, and the letter which said that if you could not afford it you should not put your money in it, because it was a speculation, but they always told us that if we could afford it

(Testimony of Mrs. Jeanette Brown.)

and didn't, we ought to have our heads examined. We were told that it was purely optional to transfer our leases into stock, although they wanted us to transfer our leases into stock and said we were crazy if we didn't.

If I am not mistaken it was in the Elks Temple when Dr. Meyers was there that something was said regarding the number of wells to be drilled. There was nothing said about shallow wells and deep wells. They said they were going to China if they had to.

Q. Was there any statement ever made in the presence of Dr. Meyers or any of the other defendants except the statement that they were going to drill as many wells as they thought were necessary to test the ground over there, to see if there actually was oil there?

A. They said they were going to—Dr. Meyers said he was going to drill over here and over there and over there until he had proved the structure.

Re-Direct Examination

By Mr. Hile:

Q. Mrs. Brown, what, if anything, was said to [113] you in connection with stating it would be advisable to turn the leases into stock, as to why it was advisable.

A. Because they expected that well to come in from time to time, and they wanted it so we could sell some of that stock at any time.

Mr. Johnson: I object to that, your Honor.

The Court: She may answer.

(Testimony of Mrs. Jeanette Brown.)

A. Because we could turn the stock so much quicker than we could the leases.

Q. And with regard to any statements made at public meetings which you attended, relative to a speculation and a gamble, was anything said in that connection about Dr. Meyers?

Mr. Johnson: I object to that as repetition. He went into that on direct examination.

The Court: She may answer.

A. Dr. Meyers was the one that was furnishing all of the money, and he was backing the whole development for us.

Mr. Johnson: Now that is the same as she went into on direct. I move that it be stricken.

The Court: Motion denied.

Mr. Johnson: Exception.

Q. (By Mr. Hile): I will ask you whether or not at any of the public meetings you attended anything you said as to why leases were desirable rather than stock, prior to the conversion discussion?

A. Well, they wanted us to take leases because nobody could take them away from you. [114]

MRS. ELIZABETH THORP,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I live in Seattle, Washington. I lived there in March, 1935. From March, 1935 to April 15, 1936 I was saleslady for the Peoples Gas and Oil Company. I think perhaps I made about 150 sales of leases and my family bought about twenty acres.

While we were selling we were obliged to attend at least four sales meetings a week, and I did attend them while so employed. These meetings lasted from an hour to an hour and a half, and sometimes two hours. We were taught the art of selling leases and how to become good salespeople.

I almost always attended the public meetings at the Eagles Auditorium in Seattle.

Usually William Broome addressed them and there was always someone to introduce him, Derby Markowitz or Tobe. I remember that Mr. Broome said regarding Dr. Meyers that he was a very great man and a builder of many bridges, that he had a lot of wealth and that he was financing the means to develop Frenchman Hills. He made those statements many times. I recall that Broome told how he met Dr. Meyers, after searching two years for somebody to finance Frenchman Hills. After he had gone to the large oil companies and they had laughed at him, *and they had laughed at him*, he had finally met Dr. Meyers by accident and had an

(Testimony of Mrs. Elizabeth Thorp.)

all day conference with him and Meyers had told him, "If this is [115] as good as you say it is, I will finance it on one condition, that is that you sell leases, so that we can have legislative protection and support in the state of Washington, when and if we bring in oil in Frenchman Hills." That was Broome's statement.

Regarding Dr. Meyers' connection with bridges he said that Meyers was one of the world's greatest bridge builders and that he was also interested in building the Cascade tunnel.

I heard Dr. Meyers speak on two occasions. Once at the Eagles Auditorium and once at the Olympic Hotel. The meeting at the Olympic Hotel was a banquet for the sales people only. Derby Markowitz introduced Dr. Meyers at that time. It was in the summer of 1935, as I remember it.

I remember Dr. Meyers saying at one time that as a lad of twelve he used to dream about the building of bridges and he hoped to become a great bridge building and he had lived to see his dream come true. He said that he had refused to finance Frenchman Hills until we had a legislative protection in Olympia, because he said he had to fight for sixteen years in California to get legislative protection in the building of the San Francisco Bay bridge.

Q. Did Dr. Meyers, at any of these occasions when he spoke, say anything about his first conference with Mr. Broome?

(Testimony of Mrs. Elizabeth Thorp.)

A. Well, he was very much enthused, and he told Mr. Broome that he was.

Q. Did he say where this occurred?

A. In his office.

Q. That first meeting with Broome?

A. Yes. [116]

Q. What did he say about it?

A. Well, he met Mr. Broome, had an appointment with him at nine o'clock in the morning, and they stayed together until five, which was very unusual for him, because usually his conferences didn't last over, for the most, thirty minutes. And after he had looked over these records which Broome had, why, he told Broome he would investigate very thoroughly, and he did, checked it very thoroughly, and he found it many times better than Broome had told him.

And then he told Broome he would go ahead and finance the project.

Q. Did Dr. Meyers say anything about Simons and Markowitz?

A. Well, he said after he decided to finance the development project, he selected,—and he pointed like this (indicating) “I selected these two young men as partners.” And he said, “I think if I had serched the world over, I couldn't have found two finer young men than these boys.”

Q. Now, do you recall his saying anything,—that is Dr. Meyers, saying anything other than what you have already stated?

A. Well, I remember him saying he was willing

(Testimony of Mrs. Elizabeth Thorp.)

to put his last dime into the development project; and he said "If and when oil is brought in at Frenchman Hills, and after I have been reimbursed for my part that I have put in", he said, "I will give any portion that would be coming to me to the charitable institutions in the state of Washington."

I never heard Dr. Meyers speak about the number of bridges he had build. I did hear Mr. Broome one time say that Dr. Meyers was the builder of 17 of the world's largest bridges, including the Longview Bridge. [117]

Cross Examination

By Mr. Simon:

Bill Markowitz and Jim Simons were constantly referred to as "the boys". I never heard Mr. Meyers say that they were "his boys".

I do not remember hearing Mr. Broome say that Dr. Meyers' associate, Mr. Strauss, was the man who had designed the Longview Bridge, the Golden Gate Bridge and these other bridges. I did not understand that Dr. Meyers had personally gone out and built these bridges. I understood that he was the head of the Strauss Engineering Company. In fact we had a folder in our sales kit to that effect.

I heard Mr. Broome, before the lease campaign closed, say several times, at both public and salesmen meetings, that he was 99.9% sure he would find oil. I don't remember whether I testified to that in the first trial or not. There were a lot of things that I could have said, but they didn't ask

(Testimony of Mrs. Elizabeth Thorp.)

me. I told my prospects that the probability of bringing in oil was very good, and that was as far as anybody could go. Broome said at public meetings, that while oil was speculative, if you were successful you might make a lot of money, but if you could not afford to loose the money you should not speculate. At the prior trial of this case it is true that I said, that nobody at any of the public meetings went any further than to say that the possibility of bringing in oil was very good.

Re-Direct Examination

By Mr. Sager:

Mrs. Thorp, was it at a public meeting that Mr. Broome made that statement about 99%? [118]

A. Both. He said that several times. Yes, that was at the Eagles Auditorium.

Q. Well then, that was a little stronger statement than what was contained in the instructions, was it not?

The Court: The objection is overruled.

Q. (Mr. Sager): That statement went farther—— A. Oh, yes.

Q. ——than the instructions? A. Yes.

Q. Were you permitted to make statements to your prospects that you heard from the principals of the company at the public meetings?

Q. (By Mr. Sager): Did you understand my question?

A. Why, we were always permitted to say anything that we heard Mr. Broome say, or in any of

(Testimony of Mrs. Elizabeth Thorp.)

the meetings. That is why we attended the meetings, to become boosters; become enthusiasts.

Mr. Broome said, oftentimes, if we could afford to buy stock we should by all means do so, but if on the other hand it took the bread out of children's mouths or shoes from their feet, we don't want to take your money; but if we could afford to buy leases and did not, we would be sorry.

Re-Cross Examination

By Mr. Simon:

Mr. Broome said that only the drill could tell the story. [119]

FRED W. McMILLAN

A witness called on behalf of the Plaintiff, after having been duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live at 5152 South Sheridan Street, Tacoma. I was employed by the Peoples Gas and Oil Company from May, 1935 until the 14th day of April, 1936.

The first meeting I attended was at the Olympic Hotel about the middle of May, 1935. Present were William Markowitz, Dr. Meyers, Mac Christensen, and Mr. Simons. The sales organization was there from both Tacoma and Seattle.

Mr. Markowitz made a short talk and there were handed out, I believe, ten sacks of money to the high salesmen, \$100.00 in each sack, all in silver. Marko-

(Testimony of Fred W. McMillan.)

witz said they were there to develop the state and there was plenty of money to do it.

The next meeting I attended was a sales meeting in the Washington Building, about May 15, in the morning. Mr. Simons, Mr. Markowitz and Mac Christensen were present. They talked on the development of the oil structure on Frenchman Hills. They had plenty of money and they had a man to back them and they would furnish us literature and dynamite to go out and raise the money. They mentioned Dr. H. Harry Meyers. Broome made a talk and said he had spent \$65,000.00 of his own money getting the structure together and he had run short of money and was finally referred to Dr. Meyers. Dr. Meyers approved the program and said he would furnish the money.

The first public meeting I attended was at the [120] Elks Temple in the first part of August, 1935. Mr. Simons, Mr. Markowitz and Mac Christensen were there. Broome got up and read a telegram that night to the audience. They were talking about drilling a tunnel through the Cascade Mountains. He said that the telegram was from Dr. Harry Meyers and said they had a guarantee of \$40,000,000.00 for the Cascade Tunnel.

I attended another meeting in August and one about the latter part of October. Dr. Meyers was there that night. They had a loud speaker and introduced him. He made a short talk. He was not a very good talker, and I could not get much of it. He did say that the structure looked good

(Testimony of Fred W. McMillan.)

and that he was there to finance it and help develop it.

Dr. Meyers was present at another meeting at the Odd Fellows Temple later in the winter of 1935, but I do not remember the month. He did not talk at that time. I remember statements at these meetings that Dr. Meyers was the "instigator" of the Golden Gate Bridge, for one, and he had been in several large deals, but I do not recall what they were. He was supposed to be a multi-millionaire.

Q. Did you receive any instructions from any of the defendants, as to securing the attendance of persons at public meetings?

A. Well, we were instructed always to be at public meetings. "We will give you the dynamite and that is the place for you to make your contacts and make your sales."

Q. Did you make any such contacts?

A. No, I didn't. I sold nothing.

Q. Do you know of any others that did? [121]

A. Well, I saw lots of the contracts written up.

Q. At the public meetings?

A. Yes, at the public meetings. They had a little room in the hall outside and they took their prospects out there and wrote them up.

Cross Examination

By Mr. Simon:

Defendant Meyers never gave me instructions about sales. Broome and Christensen made statements regarding the well. They sent out a bulletin one day when they figured they were going

(Testimony of Fred W. McMillan.)

to bring in a well on the 3rd of November. They were placing blanket insurance on our cars and told us to wear old clothes because they did not want to take any changes. The reason for putting on old clothes, as I understood it, was that the well was liable to come in a gusher on that day. Mac Christensen and Broome said so in the meeting the day before we left. But I do not know of any bulletin about it. I did not say anything about the \$40,000,000.00 telegram in my former testimony. It didn't come out.

Re-Direct Examination

By Mr. Hile:

Q. One thing I neglected to cover in my direct examination. At any of these meetings you testified to where any of the defendants were present, Mr. McMillan, I will ask you if anything was said with reference to this being a speculation and a gamble?

A. Well, they would say it is a speculation and a gamble, but if you have got the money don't leave this meeting or this hall until you put down some money, or go to the first doctor, the nearest doctor you come to and get your head examined.

[122]

Q. And with reference to any sales meetings, were any instructions given you, when the defendant was present, other than the defendant Broome alone, with reference to getting money?

A. Mr. Simon and Mr. Markowitz were there.

(Testimony of Fred W. McMillan.)

Q. What did they state with reference to that?

A. Mr. Broome stated that "we want you to get these sales and get some money, and we don't care how you get it, but get it; bring in these sales. If you don't, get off the job."

Recross Examination

By Mr. Simon:

Q. And wasn't it always stated by Mr. Broome or Mr. Christensen, in the course of these public meetings that you attended, that if you couldn't afford to lose your money, that you were not in a position to gamble that was represented by the purchase of a lease on Frenchman Hills.

A. He would tell me that and then at the same time he would turn around and tell me to dig up some money any way I could get it, and buy some leases; this will be your last opportunity.

Q. But he did tell you that if you couldn't afford to lose it, keep your money in your pocket and wish them well.

A. Yes, sir.

Q. Wasn't it particularly said by Mr. Broome and by Mr. Christensen that nobody could tell how much you might make *it* oil, if oil were brought in over there at Frenchman Hills, but they could certainly tell you how much you could lose if you didn't?

A. Now listen. They told us more how much we would make and not what we would lose; if we made, we could make as much as fifteen thousand an acre, which listened pretty good. [123]

(Testimony of Fred W. McMillan.)

I was told that we might lose, but there was not very much chance of losing because we had the money back of us to drill and bring in the oil, if it was there. I do not believe the field was proven. "I believe they should have done the drilling as they said they would, with from six to twelve wells. I don't believe any field can be proven by one well." I believed there was gas and oil in the Frenchman Hills because there was a pretty good gas field right across the Columbia River.

Redirect Examination

By Mr. Hile:

I was never told that the company owned any property in Ratlesnake Hills, but understood that Newborn owned that acreage. [124]

C. CEDARLAND,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

I live in Seattle. I was employed by the Peoples Gas and Oil Company about the first of February, 1935, as salesman at Tacoma until about August of that year, when I was transferred to Yakima to take over that office as Manager. Before going to Yakima I attended sales meetings in the office in the morning and public meetings also. The private

(Testimony of C. Cedarland.)

meetings were addressed by Mr. Christensen, Manager of the Tacoma office and once in awhile by some officer from Seattle. The general instruction was that if we had any prospects we should get them down to the public meetings so that they would see some of the men at the head of the institution. We had cards that were passed out to prospects. If they were interested they signed their name and address and turned them in. There were door prizes. They would drop the cards in a box and the door prize was awarded and the cards were used to follow up on prospects. After the meeting many times enthusiasm would be high and people would want to buy and we often made sales there after the meeting was closed.

As I recall it defendant Meyers spoke at two meetings before I went to Yakima, once in the Elks Temple and I think once at the Odd Fellows Temple. The first meeting, as I recall it, was about April, 1935. We had been promised that we would have an opportunity to see Dr. Meyers in person and we were to get the people out so that they could see the men behind the project. We were instructed to [125] get our prospects down so that they could see Dr. Meyers.

Mr. Broome introduced Dr. Meyers. He reiterated what he had said before as to having exhausted his own private funds and at last had been successful in gaining Dr. Meyer's interest in the project and he had agreed to finance the program.

Dr. Meyers spoke and said he had been interested

(Testimony of C. Cedarland.)

in Washington in the sense that he felt like coming home here and he was going to lend his support to natural resource development; that when the proposition had been made to him by Mr. Broome his reaction had been to go into it if as good as Mr. Broome had represented it, but before doing so he had had men from his own company come up here to check on Broome's findings.

As to Dr. Meyers' connection with bridges or engineering firms I do not recall any specific bridge mentioned that night, but Broome at most of the meetings made the statement that Dr. Meyers was the man who built the Golden Gate Bridge. Dr. Meyers, in his statement that evening, referred to his past experience and said that he had been instrumental in helping along bridges and things of that sort.

Dr. Meyers said regarding Simons and Markowitz that they were the boys that he had selected for this work and he felt that they understood it and were competent to do that job. He said that they were going to make a thorough and complete test of the structure and he was going to support it to that end with his private fortune. He said he was not interested in making money. He had enough and anything he made over and above necessary expenses would be given to some local charity. [126]

Sales meetings and public meetings were also held at Yakima after I went there. I think Dr. Meyers was there twice, but Broome addressed all the public meetings, except once when he had a sore

(Testimony of C. Cedarland.)

throat or something which prevented him. Simons, Broome and Markowitz addressed meetings. Meyers appeared at sales meetings just for a short time.

Meyers said he intended to finance the drilling program until the structure was proven or disproven. There was to be more than one well, but I cannot recall whether it was nine or ten. One well was not sufficient to prove the structure.

There was a meeting held at Yakima concerning the conversion of leases into stock. That was more or less the beginning of the rupture. We had sold leases and acreage in order that there could be no manipulation. When the conversion plan came up the explanation was given that acreage was too cumbersome in the event a well should come in; that people would want to capitalize quickly on the sales while property values were running high and that it would be too involved to hunt up husband and wife to join where there was community property. Therefore, the idea was to convert into stock so they could sell any portion.

We were instructed to assist and have facilities for lease holders to convert and to have notary publics available to witness the transfers. The conversion was optional with the individual, but if he failed to make the change it might cause him to lose some quick money that always comes in with an oil field. The plan, as presented, was to make transfers more flexible in the event the well came in. In any field the first well would make prices go to enormous figures and people naturally would want

(Testimony of C. Cedarland.)

to capitalize on the opportunity. A very large number of people transferred the [127] night of the meeting. The notaries were kept busy.

After the close of the sales campaign I attended a meeting at Seattle, where the matter was discussed of turning over to the development company the uncollected balances on the leases. All of the official family was present, including the defendant Meyers. Dr. Meyers was said to have additional interests that were going to take his time and he wanted to be relieved of the intimate responsibility of the development company. The financing of the drilling operation would then depend upon the unpaid balances of the accounts receivable. Still if that didn't prove sufficient Dr. Meyers was supposed to come to the rescue and carry out the program. Dr. Meyers made that statement.

I was present later at the meeting when the participation plan was discussed. That was at Seattle. Simons, Markowitz and Broome were present and I am sure that Dr. Meyers was in the vicinity. Whether he was in the activity of the meeting I do not recall. I saw him around.

Q. (By Mr. Hile): What was said if you recall about the raising of any money? Do you recall anything that was said by any of the defendants?

A. Well, I can't specify specifically.

Mr. Johnson: Just a minute! I don't believe we are charged in the indictment with anything of that nature, the matter of participations. I object to it upon the ground that it is incompetent, irrele-

(Testimony of C. Cedarland.)

vant and immaterial, so far as the charges are concerned.

Mr. Hile: Charged as a part of the scheme, your Honor.

The Court: My recollection is that it does. I can't place my finger on it; but the indictment does make some such allegation. [128]

Mr. Johnson: Not as to participations.

The Court: Objection overruled.

Mr. Johnson: Exception.

The plan was to be an enlargement of the program. The officials were going to step into the background and let the various sales managers take over the responsibility of putting across the program. Several projects were to be developed. Some up around Bellingham, some over in the Olympic Peninsula.

The consensus of opinion of the sales managers was that the original program should be carried out to keep faith with the people before we attempted to launch another program.

I bought some leases for myself and my wife and converted some of them into stock. I never thereafter received notice of any stockholders' meeting of the development company nor any request for a proxy.

In selling the leases I relied upon the statements made by the various defendants at the public sales meetings and made statements to our customers accordingly.

(Testimony of C. Cedarland.)

As to the matter of the enterprise being a speculation and gamble, it was always stated that it was a speculation, but that the speculative angle was practically eliminated because of the men, money and machinery available in this program.

Q. Do you recall what the volume of business was in Yakima while you were Sales Manager from August, 1935 to April, the approximate value I mean, volume?

Mr. Johnson: I think that is immaterial.

The Court: That is in the indictment, isn't it, the allegation that there was——

Mr. Johnson: How much business is certainly immaterial.

The Court: It is one of the allegations of the indict- [129] ment, that they sold so many thousands of leases throughout the territory where they operated.

Mr. Johnson: It is not a material allegation of the incident, your Honor.

The Court: Objection overruled.

Mr. Johnson: Exception.

The Court: Exception allowed.

I would estimate that the sales in Yakima amounted to better than \$250,000.00 to \$260,000.00 while I was sales manager.

Cross Examination

By Mr. Johnson:

While salesman at the Tacoma office my commissions were about \$150.00 per month. I went to Yakima on the first of August, 1935 and was man-

(Testimony of C. Cedarland.)

ager there until the program closed in 1937. I believe the first three months I was permitted to draw \$250.00 against the sales and later \$300 per month. At the time of the conversion of leases to stock we were told that the plan was adopted because of the community property laws, the transfers would be more expeditious and it was a more flexible transfer. The plan was optional, but you might penalize yourself if you did not come in on it. You would otherwise lose out if you should want to convert quickly. No stock was sold to the general public by the company.

The explanation that the purchase of leases was a speculation and gamble was made at every meeting, and that only the drill could tell the story, and the gamble was like the gamble in any oil field, but the uncertainty relative to the finances for drilling had been removed because we had the men, the money and the machinery. Defendant Meyers did not at any time represent himself to be an engineer. He was always represented as the financial management. He never told me that he had built any bridges as an engineer. He referred to financing the Golden Gate Bridge. He mentioned to me at one time something about his company being connected with Armour-Swift Burlington Bridge in Kansas City. He never told me personally that he was the head of the Strauss Engineering Company, but I heard Broome make that statement. Broome did not say Meyers was associated with Strauss or the Strauss Engineering Company, but that he was

(Testimony of C. Cedarland.)

the head of the Strauss Engineering Company. I cannot say whether Meyers was present at that time.

Meyers never did give me instructions on selling leases. I followed the instructions of Exhibits 11, 12 and 13, being bulletins from the office relative to instructions for salesmen. I had occasion to dismiss some salesmen because of misrepresentation. That was my policy and my instructions in handling salesmen. Defendant's Exhibits A-26 and A-27 were received in evidence, they being letters from the home office stating that no misrepresentations were to be made by the salesmen. Defendant's Exhibit A-28 is a letter written by William A. Broome when he was unable to attend a scheduled meeting at Yakima and I read it at the meeting.

Q. Do you know of any occasions where refunds were not made where there were misrepresentations that had been made?

A. No, none were called to my attention.

Redirect Examination

By Mr. Hile:

By misrepresentation I mean statements to a prospective buyer that the well was going to come in tomorrow and he had to buy today, or relative to the depth of the well and things of that sort which were untrue. At the time of selling I [131] did not consider it a misrepresentation to say that Dr. Meyers was backing the drilling on Frenchman Hills and would continue to drill until the well was completed.

(Testimony of C. Cedarland.)

It was not considered a misrepresentation during my employment to say that Meyers was head of the firm that built the Golden Gate Bridge. It was not considered a misrepresentation to state that Dr. Meyers was a philanthropist and did not want to make anything out of the enterprise, or that he was a multi-millionaire.

Prior to the time when the conversion plan was presented it had been stated in public meetings that leases were better than stock. That argument we used in helping promote our sales campaign. We were given that argument by the officials. The leases would insure that there would be no stock control and lease-holders would share and share alike regardless of where located. [132]

CHESTER ARTHUR BROWN,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I live at 209 East 27th in Tacoma. In 1935 I lived in Olympia. My first contact with the Peoples Gas and Oil Company was in buying some leases. I bought thirty acres all together at from \$25 to \$35 an acre. From November, 1935 to April 15, 1936 I worked as salesman out of Tacoma and sold maybe from 45 to 50 leases. Shortly before Christmas, 1935 I attended a meeting in the Elks

(Testimony of Chester Arthur Brown.)

Temple in Tacoma at which defendant Meyers spoke. Markowitz, Simons and Broome were present. Broome introduced Meyers. He said he was going to introduce a man who was financing the development on Frenchman Hills.

Meyers told the people they had nothing to worry about; that he had sent his own geologist up here to check Mr. Broome's work. He had received a very favorable report and he wasn't worrying about his money. He said he had plenty of money to finance the program and prove or disprove the field. He said he would drill several wells.

Cross Examination

By Mr. Simon:

I am the husband of Jeanette Brown who was an earlier witness.

I first purchased two and a half acres for \$62.50, 5½ acres for \$125.00, next five acres for \$125, next I received an acre and quarter as a prize. On April 15, 1936 I bought five acres for \$175, less 20%. I also bought some for a minor daughter. A son also bought some individually. [133]

I converted all leases into stock. I believe I had 200 shares of stock. I sold 87 shares of my stock to others.

When I left the employ of the Peoples Gas and Oil Company I went to the Northwest Gas and Oil and thereafter to the Sound Cities Gas and Oil as salesman.

(Testimony of Chester Arthur Brown.)

Redirect Examination

By Mr. Sager:

We bought some leases from Mr. Whitesall before I started to work for "them" and my son bought some for himself. [134]

PAUL V. DOUGLAS,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I was city fireman from 1916 to 1941. I purchased leases from the Peoples Gas and Oil Company. I attended public meetings in the Eagles Auditorium in Seattle first in April, 1935.

Exhibit 42 consists of leases I purchased.

Exhibit 43 is assignment to the development company. I paid for all leases in full.

Government Exhibits 42 and 43 thereupon admitted in evidence.

I heard defendant Meyers on two occasions during the sales campaign. He said he was financing the well; that he had Broome tied up so that Broome would not get a cent out of it until he brought in oil and then the development company would receive 22½% and leaseholders 65% and land owners 12½%. He said he would finance the well if they had to go to China. He said he always carried two sharp pencils to write checks and he would not take

(Testimony of Paul V. Douglas.)

a cent of profit but would donate it to charity in the State of Washington.

Simons also said they had Broome tied up where he would not get a cent until he brought in oil.

Q. And on either of those occasions was anything said about a speculation and a gamble, that you recall?

A. Well, Broome would always bring that out. At about every meeting Broome would say it was a specula- [135] tion. He would say, "If you need any medical attention or take beefstake away from your family, keep your money in your pocket." "But", he said, "if you can afford to come in and won't, you better go to a doctor and have your head examined."

I do not remember the amount I invested. I believe it would be about \$700 or \$800. I purchased on the strength of these reports.

Cross Examination

By Mr. Johnson:

The reason I purchased leases was that I thought there was a chance to get oil. There is a little gambling spirit in me, but I would like to have a square deal. I bought partly because of Mr. Simons and partly Mr. Meyers. A man worth \$25,000,000.00 I did not think would want any more. He was past 63 years of age. A salesman told me he was worth \$25,000,000.00. Meyers, himself, did not say he was worth \$25,000,000, but said he was financing the well and had plenty of money. He said all his profit would be given to charity.

(Testimony of Paul V. Douglas.)

Some of the leases were purchased in my wife's name. I do not remember how many. I think we had 25 acres in both names. I bought all through salesman, Olsen. I think once my wife bought down in the office and told them to give Olsen the credit.

Q. Now, Mr. Douglas, one other question: Mr. Broome always did tell you, didn't he, that this was a pure speculation and that you were taking a chance on any return only if they got oil?

A. Yes, he called it a speculation; but he said he knows there is oil there; he spent his little fortune of \$60,000.00 surveying that field; and he said you could see the rainbow colors in the water wells, and the cattle [136] wouldn't drink the water. He said there was a seepage out of the ground and you could light it and it would burn. I confirmed the fact that gas was coming out of the ground.

I also bought some participations before a receiver was appointed. I converted my holdings into stock. [137]

WILLIAM T. LANE

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am a retired blacksmith. I bought leases from the Peoples Gas and Oil Company. I think first

(Testimony of William T. Lane.)

about August 23, 1935. I attended their meetings pretty regularly, after I bought the first lease.

I heard defendant Meyers speak at about the third meeting. That was in Odd Fellows Temple in Tacoma. Christensen, Broome, Meyers, Jimmie Simons were present. Christensen spoke first. He introduced Mr. Broome, Dr. Meyers and Mr. Simons.

Q. What did Mr. Broome say?

A. He said that Mr—Dr. Meyers was the man backing the outfit; he was the man that was financing the whole proposition; he was the man that was back of the San Francisco Bridge; he had all kinds of money, more than he knowed what to do with; and all he intended to get out of that was his money back. The rest of his profits would go to charitable institutions of the state of Washington.

Q. Now, did Dr. Meyers say anything further that you remember, other than what you have testified?

A. Well, he spoke about cutting through the Cascade Tunnel, but before he undertook that he wanted to get the backing of the people so that he wouldn't have any trouble in getting the tunnel project; he had trouble in getting the San Francisco Bridge started; he had forty-one lawsuits before he got the people back of him. Finally, he completed it. [138]

Next I heard Dr. Meyers speak just before Thanksgiving in 1936. Broome, Meyers and Simons

(Testimony of William T. Lane.)

were present. Christensen spoke first and then Broome.

Broome told us we need not worry about our finances. He was satisfied that Donny Boy was going to come in and we were practically sitting on easy street. He said the money was going into a sinking fund and he intended to build a pipe line to five of the major cities in the state, he mentioned Seattle, Tacoma, Olympia, Walla Walla and Spokane. He said we need not worry about our Christmas presents, that we would be going downtown and in place of looking for an automobile, we would be looking up steamship companies, taking berths for Europe or the Orient.

Mr. Meyers said that he was going to put down six more holes if he did not strike it on the first one. He wasn't going to quit drilling until he had thoroughly prospected the ground.

Government Exhibit 44 is leases I received from the Peoples Gas and Oil Company in Seattle. I invested a little over \$700.00.

Q. I will ask you if at any of these meetings that you have testified to, if anything was said about a speculation and a gamble? A. Yes.

Q. What?

A. He told us,—Mr. Broome told us it was a speculation and a gamble.

Q. Anything else in that connection?

A. Yes. He told us we were foolish if we didn't take a chance, we ought to have our heads fixed if we did not take the opportunity.

(Testimony of William T. Lane.)

Q. Did you believe these statements that were made about the defendant, Meyers, that he was financing [139] the well? A. Absolutely.

Q. That he was a wealthy man?

A. Yes sir.

Q. That he would give an adequate test?

A. Yes, sir.

Q. And did you act on those statements?

A. Yes, sir.

Cross Examination

By Mr. Simon:

I bought twenty acres all together and then some stock. Ten acres I bought before I attended any meetings.

I was told that this was a speculation and a gamble and if I couldn't afford to lose my money to keep it in my pocket. Broome said he thought it a good speculation and that the only risk was whether there was oil or not. That nobody could tell whether there was oil or not and that the best informed person in the world could only give a guess until the drill had told the story.

Mr. Broome, when he introduced Dr. Meyers, did not say that Meyers was an associate of Joseph B. Strauss, and the only way he mentioned the Strauss Engineering Company was that Dr. Meyers was the head of that. I understood that Meyers was financing the outfit and the engineer and the whole outfit, and Mr. Broome said that Meyers himself was an engineer. I naturally thought he was a physician because he was called "Dr." Meyers. I

(Testimony of William T. Lane.)

was banking on Dr. Meyers giving the Frenchman Hills an adequate test. It did matter to me whether Dr. Meyers was a partner of Mr. Strauss or was president of the Engineering Company as long as he supplied the money for the adequate test. I thought we were backed by a man of great mechanical ability, a great financier, a [140] man who had done wonderful job of building a bridge. I did not understand Meyers was an oil engineer, but did understand Broome to say that he was a construction engineer and one of the greatest engineers in the country.

I was over at the well in the fall of 1936 and the fall of 1937 and they were still drilling. I now expressed doubt of the earnestness of the operation because I had the impression that a receiver was appointed for the development company because it was not solvent. The drilling did not stop until after the receiver had been appointed and Mr. Broome continued to make speeches for sometime after the appointment of the receiver.

Dr. Meyers was financing the outfit, all the bills were paid up to date. We didn't owe a cent. Meyers and Broome both made that statement and I have only their word for it.

Re-cross Examination

By Mr. Simon:

It did not make any difference to me who paid for the drilling so long as they continued drilling.

(Testimony of William T. Lane.)

Re-re-direct Examination

By Mr. Hile:

It did make a difference if Dr. Meyers dropped out of the picture, for without him we did not have the financial backing they promised us. [141]

MIKE CERRO,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I reside at Dupont, Washington. I am a barber by occupation. I was in Dupont in 1935. I then bought some leases from the Peoples Gas and Oil Company. I bought them from Mr. McMillan and paid \$62.50, \$5.00 down and \$5.00 a month. I made the payments in Tacoma.

Plaintiff's Exhibit No. 46 is the letter that I received through the mail. The letter came in the envelope attached, being the letter on which Count #9 is based.

Q. At that time did you have any occasion to buy any leases from the Peoples Gas & Oil Company? A. Yes, sir.

Mr. Johnson: I object to that. There is no connection with the defendant.

The Court: I did not hear your objection.

Mr. Johnson: I object to that unless he can

(Testimony of Mike Cerro.)

show he bought these leases by reason of the representations of these defendants.

The Court: Well, I assume that he will do that. He can't do it all at once.

Mr. Johnson: Exception.

Q. (By Mr. Sager): Did you have occasion to buy any leases from the P. G. & O. Company?

A. Yes.

Q. From whom did you buy them?

A. Mr. McMillan.

Q. Do you know his first name? [142]

A. Fred McMillan.

Q. Fred McMillan? A. Yes.

Q. How much did you buy? A. \$62.50.

Q. And how did you pay for them?

Mr. Johnson: That is immaterial, if the Court please.

The Court: Objection overruled.

Mr. Johnson: Exception.

A. Five dollars down and five dollars a month.

Q. (By Mr. Sager): Where did you make the payments? A. In the office in Tacoma.

Mr. Johnson: I object to that as irrelevant and immaterial.

The Court: The objection will be overruled. Now, of course, if you plan to bring all the various purchasers in here, we would have a different situation. Then, of course, we would be called upon to say how far the evidence was to go. But as to the transactions with any reasonable number of witnesses, and their relations here, the Court feels that

(Testimony of Mike Cerro.)

they are material, and as long as your objections go to that line of questions, the Court is going to overrule them and you may have your exception.

The Court: Is this one of the letters directly charged in the indictment?

Mr. Sager: Yes, your Honor.

The Court: Which count?

Mr. Hile: Overt act No. 4, I believe; count 13.

Mr. Sager: It is count 9.

The Court: Very well.

Mr. Sager: It also is one of the form letters stipulated to. We offer it in evidence. [143]

Mr. Johnson: We object to it on the ground that it is incompetent, irrelevant and immaterial and no proper foundation laid.

The Court: The objection will be overruled.

Mr. Johnson: Exception.

Letter and envelope addressed to Mike Cerro admitted in evidence and marked plaintiff's exhibit No. 46.

(Testimony of Mike Cerro.)

PLAINTIFF'S EXHIBIT No. 46

[Envelope]

[Return Address]

Peoples Gas & Oil Development Co.

Fourth and Pike Bldg.

Seattle, Washington

[Stamped]: Seattle Apr 24 2 30 PM 1937 Wash.

Mr. Mike Cerro

Dupont, Washington

[Letterhead]

[Pencil Notation]: 7-P-1 (9)

Peoples Gas and Oil Development Co.

of Washington

April 23rd, 1937.

Mr. Mike Cerro

[In Pencil]: Mike Cerro

Dupont, Wash.

Dear Mr. Cerro:

Considerable time has elapsed since you completed the installment payments on your contract originally entered into with the Peoples Gas and Oil Company covering the purchase of gas and oil leasehold acreage on Frenchman Hills. However, you have not as yet remitted the \$5.00 fee referred to in Paragraph 6, which is, of course, a component part of the agreement with you, and we can only assume that the previous letter calling your attention to this matter has failed to reach you.

We are certain that it is your wish to complete all

(Testimony of Mike Cerro.)

of the terms of the contract, as it is only in this way that your rights may be fully protected. We are quite anxious that this be done without further delay, and ask, therefore, that you kindly forward the above mentioned fee of \$5.00 Immediately upon receipt of this letter. We shall then proceed to make up the necessary documentary evidence and the proper entries will be made in our records to fully substantiate your rights of ownership, thus insuring that the Assignment and Agreement heretofore executed with our company, (a copy of which you now hold), is in full force and effect. You will be advised accordingly shortly thereafter.

Thanking you for your friendship and good will, and awaiting an early remittance, we are

Very sincerely yours,

PEOPLES GAS AND OIL DEVELOPMENT CO.

BILL BROOME

William A. Broome,
President.

[Stamped]: Important Thanks for your immediate cooperation.

WAB/R

[Endorsed]: Filed Oct. 14, 1942.

(Testimony of Mike Cerro.)

Mr. Sager: I will read a portion of this letter.

Cross Examination

By Mr. Johnson:

Fred McMillan was the salesman that sold this to me. I had never been to any meeting when I made the purchase. [144]

CLINTON BRINK,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I live at 4814 South J Street, Tacoma. I am a motion picture operator. I purchased leases from the Peoples Gas and Oil Company, I think in June, 1936, through Fred McMillan. I think I paid at that time \$60 for two or two and half acres. I do not remember which. I paid on the instalment plan, \$5.00 per month. I attended a meeting at the Odd Fellows' Hall in Tacoma at which defendant Meyers was present. Mr. Christensen, Mr. Broome, Mr. Simons and Mr. Meyers were present. Mr. Christensen introduced Mr. Broome and then Mr. Broome introduced Meyers. Broome said that Meyers was a great financier, the engineer of the San Francisco bridge and that he was financing Donny Boy on Frenchman Hills.

Q. Do you recall whether he said anything at that time about what you ought to do to enable you to buy?

(Testimony of Clinton Brink.)

A. Yes, there was one item there. He said we should mortgage everything we had and buy to the limit. He had. He had even taken the money out of the children's bank.

Defendant Meyers was present when Mr. Broome made that statement. Broome also introduced Dr. Meyers. I cannot recall a word that Dr. Meyers said at that meeting.

Plaintiff's Exhibit 47 is a receipt for the recording of fee of \$5, which I paid at the office here in the Washington Building in the office of the Peoples Gas & Oil Company. [145]

Mr. Hile: Overt act No. 4, your Honor.

The Court: He testified this came in through the mail?

Mr. Hile: No, your Honor. He received it at their office.

Mr. Sager: It is the basis of overt act No. 4, in the last count of the indictment, count 13.

Exhibit 47 admitted in evidence.

Plaintiff's Exhibit 48, consisting of a letter and several enclosures was received through the mail. The letter and enclosures came in the envelope.

Mr. Sager: We offer this in evidence. Count 9, your Honor. That is an identical letter to the stipulated 7-C 1.

Mr. Simon: Objected to as incompetent and not properly identified.

Q. (By Mr. Sager): You have had this in your possession up to the time you turned it over to Mr. Swenson? A. I did.

(Testimony of Clinton Brink.)

The Court: Count 7, isn't it.

Mr. Sager: Count 7, your Honor.

Exhibit 48 admitted in evidence.

PLAINTIFF'S EXHIBIT No. 48

[Envelope]

[Return Address]

Peoples Gas & Oil Development Co.

Fourth and Pike Bldg.

Seattle, Washington

[Pencil Notation]: C B (7)

[Stamped]: Seattle Jul 8 7 PM 1936 Wash. (3)

Mr. Clinton Brink

4521 So. Jay St.

Tacoma, Washington

[Letterhead]

[Pencil Notation]: C B

Peoples Gas and Oil Development Co.

of Washington

July 8, 1936

Mr. Clinton Brink

4521 So. Jay St.

Tacoma, Washington

Dear Friend and Partner:

Under the Assignment and Agreement heretofore executed with this company, you have agreed to turn over to us for development purposes the leasehold acreage which you purchased from the Peoples Gas and Oil Company, and you are, therefore, en-

(Testimony of Clinton Brink.)

titled to a fully participating interest in our "Community Plan of Development".

The executed copy of the "Assignment and Agreement" heretofore delivered has up to now been the only evidence of these participating rights, but to many people this has not been satisfactory for the reason that in case of the sale of all or part of such rights, they were called upon to undergo considerable expense and were confronted with a great deal of red-tape and all sorts of complicated legal requirements, necessitating, in many instances, long and intolerable delays.

It has always been my sincere wish that nothing be left undone which would tend to serve the best interests of the P. G. & O. Program, as well as the greater convenience of my partners, and I certainly feel that all of my partners, including yourself, are entitled to a different and more easily negotiable evidence of their rights, free from any costly red-tape.

In order to bring this about without changing in any way the respective interests of all parties concerned, this company has been converted into a leaseholders' company. The actual drilling operations have been transferred to a company, formed by Dr. Meyers and myself, and known as "Peoples Drillers, Inc." Under this arrangement, no one may be in the Development Company except owners of participating rights, such as yourself.

The Development Company owns the leases, and

(Testimony of Clinton Brink.)

the full proportionate share previously agreed upon will be distributed to holders of participating rights, —Namely, Sixty-five Per Cent of the Net Returns Received From Production,—under the same conditions as set forth in the “Assignment and Agreement” which you executed with this company.

[Pencil Notation]: C B

In the furtherance of the above plan, the Development Company, by a resolution of its Board of Directors, authorized the issuance to holders of participating rights, residing in the State of Washington, no-par-value shares of the Peoples Gas and Oil Development Company, on the basis of eight (8) shares for each acre assigned, so that each holder of a participating interest will be certain to receive the number of shares to which he is rightfully entitled, and which in every case will be equivalent to the interests now held under the “Assignment and Agreement” with this company.

These shares are Non-Assessable, and carry full voting privileges, and their issuance has been officially authorized by the Director of the Department of Licenses, State of Washington, under Permit issued on June 15th, 1936.

It gives me great pleasure to advise that at a recent meeting of the Board of Directors, Mr. E. W. Jorgenson, former editor of The Spokane Press of Spokane, Washington—long a champion of the people of our State—was unanimously elected as Vice-President and Treasurer of the Peoples Gas & Oil Development Company. I shall continue to serve

(Testimony of Clinton Brink.)

my partners in the capacity of President of the Development Company, and shall also continue in direct charge of our operations on Frenchman Hills as Vice-President of Peoples Drillers, Inc.

I should like to point out that in the past, before transfer of a portion or all of a participating right could be completed, it was necessary to make an assignment in triplicate before a Notary Public, incorporating legal descriptions, which frequently had to be passed upon by an attorney; then submitted to an abstractor for his verification, and finally, record in the county in which the leasehold is located. Obviously, this procedure not only entailed considerable expense, but also required a great deal of time.

I have never lost sight of the important fact that when one of my partners transfers a part of his rights to someone else, a new friend and supporter of the P. G. & O. Program is thereby automatically created, and under the new plan you will be in position to make such transfer on practically a moment's notice by simply signing your name on the reverse side of the certificate in the presence of a witness. This is only one of the many advantages of having in your possession a more negotiable instrument, and is mentioned merely to give you some idea of the benefits to be derived by you.

Please understand that if you prefer you may retain the executed copy of the "Assignment and Agreement" which you now hold as evidence of your ownership of a participating interest. How-

(Testimony of Clinton Brink.)

ever, in view of the fact that in the acceptance of the above shares your rights are Exactly the Same as you now have, inasmuch as they entitle you to Exactly the Same prorata returns, I am sure that you will readily recognize the advantages accruing to you under the new arrangement.

[Pencil Notation]: C B

Feeling certain that you will unquestionably wish to make this change as soon as possible, I am attaching hereto the proper forms enabling you to receive your certificate for the number of shares to which you are entitled. If you are married, please note that it is essential for both husband and wife to sign the blue Assignment Form before a Notary Public. (If you are unmarried, kindly state whether your status is that of a single person, widow or widower.) The white Conversion Application Form should also be signed by both husband and wife, but the witness to your signatures on this particular document need not necessarily be a Notary Public.

If you will sign the above forms and return to us, Together With the Copy of the "Assignment and Agreement" in Your Possession, we shall have your certificate issued and forwarded to you without delay, and at absolutely no cost to you.

In consideration of the many thousands of interest holders who will, undoubtedly, be anxious to receive their certificates with a minimum of delay, I ask that you send in these three papers immediately, so that our office force may function with the greatest possible efficiency.

(Testimony of Clinton Brink.)

A stamped, self-addressed envelope is enclosed for your greater convenience in returning these papers to us.

Thanking you again for the friendship, loyalty and confidence which you have so graciously extended towards our undertaking on Frenchman Hills, and assuring you that I shall always strive to serve the best interests of the P. G. & O. Program and all of my partners, I am—with every good wish

Your sincere friend and partner.

BILL BROOME

William A. Broome,

President,

PEOPLES GAS AND OIL DEVELOPMENT COMPANY

WAB/S

P. S. We have made arrangements with the Peoples Gas and Oil Co. so that you may receive the free services of a Notary Public at any of their offices in the execution of the necessary papers.

[Pencil Notation]: C B

Please Print

Name

My New Address

Street and Number

.....

City

State

My Former Address

Street and Number

.....

City

State

(Testimony of Clinton Brink.)

Phone..... Date.....

Form 8035 25M 6-30-36

(Over)

This Is For Your Protection

Please Notify Us At Once Should You At Any Time

Change Your Address

Peoples Gas and Oil Development Co.

4th Floor 4th & Pike Building

Seattle, Washington

Over

Phone SEneca 4200

[Pencil Notation]: C B

Peoples Gas and Oil Development Company

Assignment

Whereas, a certain gas and oil lease heretofore
executed was by mesne conveyance assigned to the
undersigned

.....
.....
insofar as said lease applied to and affected the fol-
lowing described land, to-wit:

.....
.....
of Section....., Township....., North,
RangeE. W. M., containing.....,
more or less, situated inCounty,
State of Washington.

Now, Therefore, the undersigned, for and in con-
sideration of the sum of One Dollar (\$1.00) and
other valuable consideration, the receipt of which is

(Testimony of Clinton Brink.)

hereby acknowledged, do hereby grant, sell, transfer, assign and deliver unto Peoples Gas and Oil Development Company, its successors and assigns, all of his (their) right, title and interest in and to the lease above mentioned with respect to the above described parcel of land.

Executed this.....day of, 193..

.....

State of Washington,

County of—ss.

On this day personally appeared before me.....

..... and

....., to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that he (they) signed the same as his (their) free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this.....

day of, 193....

.....

Notary Public in and for the
 State of Washington,

Residing at

(Testimony of Clinton Brink.)

[Envelope]

[Pencile Notation]: C B

[In Cut]: Postage Will be Paid by Addressee

[In Cut]: No Postage Stamp Necessary If
Mailed in the U. S.

Business Reply Envelope

First Class Permit No. 1404, Sec. 510, P.L.&R.

Seattle, Wash.

Peoples Gas & Oil Development Co.

410 Fourth and Pike Building

Seattle, Washington

[Endorsed]: Filed Oct. 14, 1942.

Cross Examination

By Mr. Simon:

We were told that if we could not afford to gamble to keep our money, and whether there would be gas or oil in commercial quantity was an absolute speculation.

Redirect Examination

By Mr. Sager:

They said, "If you can't afford to speculate or gamble, stay out". I don't recall anything else said about that. [146]

MISS MARION JAYCOX,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

My name is Marion Jaycox. I had occasion to purchase leases from Peoples Gas and Oil Company approximately in 1936. I attended public meetings, one before and one after the purchase. I heard Mr. Broome speak, but not Dr. Meyers.

Government's Exhibit 49 and the envelope attached was received through the mails at the apartment. The letter and envelope are both addressed to me. The letter came in the envelope and I was then living at 237 St. Helens in Tacoma.

Mr. Hile: I offer this in evidence. It refers to Count No. 4.

Mr. Johnson: The same objection.

The Court: Count 10, isn't it?

Mr. Hile: No. This is Miss Marion Jaycox. There are two Jaycoxes, your Honor. I think the one you have reference to is Alice Jaycox. I could be in error. Count 4 I believe is the one.

The Court: Yes.

Mr. Hile: The same as 7-Q-1.

Mr. Johnson: I object to it on the ground that it is not properly identified, incompetent, irrelevant and immaterial, no foundation laid.

The Court: The objection will be overruled.

Mr. Johnson: Exception.

Plaintiff's Exhibit 47 admitted in evidence. [147]

(Testimony of Miss Marion Jaycox.)

PLAINTIFF'S EXHIBIT No. 49

[Envelope]

[Return address]:

Peoples Gas & Oil Development Co.

Fourth and Pike Bldg.

Seattle, Washington

[Stamped]: Seattle, Wash. Sep 9 7 PM 1937

(3)

Miss Marion B. Jaycox,

237 St. Helens Ave.,

Tacoma, Washington.

[Letterhead]

[Pencil Notation]: 7-Q-1

(4)

Peoples Gas and Oil Development Co.

of Washington

Sept. 9th, 1937

Miss Marion B. Jaycox,

237 St. Helens Ave.,

Tacoma, Wn.

Dear Miss Jaycox:

In checking our records, we find that you have failed to make the payments as agreed to in the contract entered into with the Peoples Gas and Oil Company covering the purchase of gas and oil lease-hold acreage on Frenchman Hills.

As you are, undoubtedly, aware, the account is now \$127.00 bal. past due. You have been sent several

(Testimony of Miss Marion Jaycox.)

reminders, and we can only assume that your failure to take care of this obligation is due to an oversight on your part.

When one installment lapses and another comes along, it becomes increasingly difficult to catch up. Yet, if you take care of these payments as they fall due, you avoid the more serious difficulty of making up two or more payments. The chief essential in retaining contracts in good standing is regular monthly payments.

We, therefore, ask that you kindly give this matter your immediate attention by remitting the above delinquency now while the matter is fresh in your mind.

Your cooperation in this matter will be greatly appreciated.

With all good wishes, and awaiting an early remittance, we are

Very sincerely yours,

PEOPLES GAS AND OIL DEVELOPMENT CO.

D. BURNIGHT

D. Burnight

Auditing Department

[Endorsed]: Filed Oct. 14, 1942.

ALICE JAYCOX,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live at 819 North 5th Street, Tacoma. I had occasion to purchase leases from the Peoples Gas and Oil Company somewhere between nine or ten acres about 1936. I attended one meeting before making purchases. I heard Broome speak but can't remember whether any of the rest of them spoke or not. I saw Mr. Meyers at some public meeting.

Government Exhibit 50 is a letter I received through the mails at 237 St. Helens in Tacoma about the date it bears.

Plaintiff's Exhibit 50 (basing count 10) admitted in evidence.

PLAINTIFF'S EXHIBIT No. 50

[Envelope]

[Return address]:

Peoples Gas & Oil Development Co.

Fourth and Pike Bldg.

Seattle, Washington

[Stamped]: Seattle, Wash. Sep 20 7 PM 1937

Mrs. Alice R. Jaycox,

Avalon Apts., No. 500,

237 St. Helens Avenue,

Tacoma, Washington.

(Testimony of Alice Jaycox.)

[Letterhead]

[Pencil Notation]: (10)

Peoples Gas and Oil Development Co.
of Washington

Office of the President

20th September, 1937

Mrs. Alice R. Jaycox,
Avalon Apts., No. 500,
237 St. Helens Avenue,
Tacoma, Washington.

Dear Mrs. Jaycox:

Upon my return to the city this morning, I find your letter of September 8th.

First of all, I should like to make it exceedingly clear to you, Mrs. Jaycox, that the Peoples Gas and Oil Development Company cannot arbitrarily take it upon itself to reduce the amount of leasehold acreage purchased under contracts originally entered into with the Peoples Gas and Oil Company, either by transferring payments from one contract to another or in any other way. All such contracts which are now in our hands constitute assets of this company. The company, as you are aware, is owned by thousands of people throughout the state, and you will understand when I say that we simply cannot take it upon ourselves to do anything which would tend to lessen these assets. Any such action on my part would, in my opinion, be in violation of the very principle of impartiality and equity, and would certainly not be fair to all of those who met their

(Testimony of Alice Jaycox.)

payments promptly and completed all of their contracts in full as agreed.

In the case of Mr. Champlain whom you mentioned in your letter, he first corresponded with the Peoples Gas and Oil Company, and action in his particular case was taken while negotiations were in the process of being completed whereby the Peoples Gas and Oil Development Company actually came into possession of these contracts. Since that time, our Board of Directors have had occasion to consider two or three similar requests and have voted to strictly maintain our policy as outlined in the foregoing paragraph.

There has been no change or reduction in the amount of leasehold acreage purchased by Mr. Perkins, whom you also mentioned.

I hope you will understand our position in this matter. We greatly value your friendship and good will, and sincerely want to help you, but I repeat: in fairness to all concerned, we must uphold our policy of impartial treatment to everyone. We are prepared to live up to the terms and conditions of all contracts which are now in our possession, and naturally expect holders thereof to do the same.

Your cooperation in taking care of the present delinquency in your account and that of Miss Jaycox will be greatly appreciated, and will insure that your

(Testimony of Alice Jaycox.)

holdings in connection with your contracts are fully protected.

With best wishes,

Yours very sincerely,

WM. A. BROOME

William A. Broome, President,
PEOPLES GAS & OIL DE-
VELOPMENT CO.

WAB*r

[Endorsed]: Filed Oct. 14, 1942.

Cross Examination

By Mr. Johnson:

I paid \$62.50. It was purely a speculation. [148]

JESSIE JEWELL,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I live at 5031 7th Avenue N. E., Seattle, Washington. In 1935 I lived at 132 Belmont Avenue in Seattle. I purchased leases from the Peoples Gas and Oil Company about 1935 through a Mrs. Beatty. I paid \$48.75 for two and half acres. I gave Mrs. Beatty \$3.75 and paid \$2.50 at the office of the Peo-

(Testimony of Jessie Jewell.)

ples Gas and Oil Company every month. I attended a few meetings of the company in 1935. Mr. Broome was always there and Mr. Simons also.

Q. Do you recall what Mr. Broome said at those meetings?

Mr. Simon: I object to that as incompetent and irrelevant and immaterial, if the Court please.

The Court: Objection overruled.

Mr. Simon: Exception.

The Court: Exception allowed.

Q. (By Mr. Sager): You may answer.

A. He said it was a good investment to put our money into. He showed pictures on a screen about the oil well. He also showed wells in California.

Broome introduced Mr. Meyers at one of the meetings when I was there. He said that Mr. Meyers was a pretty wealthy man and he was going to back the oil company and he also said he helped to build the Golden Gate Bridge and was going to finance the Cascade Tunnel.

Plaintiff's Exhibit No. 51, consisting of a letter, a stock certificate and an envelope, I received by registered mail. All came in the envelope to my residence just [149] about August 29, 1936.

Mr. Sager: We offer Plaintiff's Exhibit No. 51 in evidence, on the basis of overt act No. 5. It is a duplicate of the admitted exhibit 7-N-1,—that is that letter is.

Mr. Simon: I object to it upon the reason and for the ground that it is incompetent and not properly identified, and no proper basis shown; and

(Testimony of Jessie Jewell.)

upon the further ground that it is an alleged overt act which is not within the jurisdiction of this Court.

The Court: Objection overruled. It may be admitted in evidence.

Mr. Simon: Exception.

The Court: Allowed.

Cross Examination

By Mr. Simon:

I bought my lease before attending any public meetings. The picture showed what was going on at Frenchman Hills and they also showed motion pictures of the oil industries generally throughout the country, including gushers in California.

Redirect Examination

By Mr. Sager:

I had not finished paying for the lease when I attended these meetings. I finished paying afterwards. [150]

FRED BARTALAMAY,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I live in Olympia. I am a shingle sawyer. I purchased leases from the Peoples Gas and Oil Company about September, 1935. I paid \$125.00 for

(Testimony of Fred Bartalamay.)

five acres, \$25.00 down and \$10.00 a month and paid in full.

I attended about three meetings of the Peoples Gas and Oil Company in the Odd Fellows Hall in Tacoma. I heard Broome speak twice and Meyers once.

Q. What did Mr. Broome say at that meeting?

A. He came out and he came on, and he explained who Mr. Meyers was. He said: "Folks, maybe you don't know who the man is, but he is the man who constructed the Golden Gate Bridge, and he is now working on the Cascade Tunnel, to put the tunnel through." And he kept on talking a little bit and finally he left the stage. He waved a piece of paper out to us and he said he had just received a check from Dr. Meyers for \$35,000 to release that machinery in Seattle to go out on Frenchman Hills.

Q. Did he say anything about Mr. Meyers' connection with the company, with the drilling operations?

A. Yes, he is the man that furnished the money to go ahead with.

Mr. Broome told us he was sorry to be here. He ought to be at Frenchman Hills because he wasn't looking for anything small, he was looking for a gusher and it was liable to blow up almost any time and take the derrick down and for that reason he ought to be over there. [151]

I heard Dr. Meyers speak at one of the meetings. He said "Folks, why fear? I have got hundreds of

(Testimony of Fred Bartalamay.)

dollars invested where you have only got one penny invested."

Plaintiff's Exhibit No. 52 I received through the United States Mail, at my mail box, Route 3, Olympia. That was my residence at that time.

Q. You received that as part of your business with the PG&O Company? A. Yes.

Mr. Sager: We offer Exhibit 52 in evidence.

Mr. Johnson: I object, if the Court please, on the ground that it is irrelevant and immaterial and incompetent and not properly identified, and no foundation laid therefor by any charge.

The Court: Objection overruled. (Exhibit 52 admitted)

PLAINTIFF'S EXHIBIT No. 52

[Letterhead]

Peoples Gas and Oil Co.
of Washington
August 31st, 1936.

Mr. Fred Bartalamay
R. F. D. #3, Box 505
Olympia, Wash.

Dear Mr. Bartalamay:

We acknowledge with thanks the balance due on your contract to purchase 5 acres of oil and gas leasehold.

We have been advised by the Peoples Gas and Oil Development Company that you have assigned your

(Testimony of Fred Bartalamay.)

lease to them under their "community plan of development" on Frenchman Hills.

Upon receipt of the \$5.00 fee referred to in Paragraph 6 of your contract with us, we shall proceed immediately to make up all of the papers necessary to substantiate the ownership of your rights, and this information will then be recorded in the permanent records of the Peoples Gas and Oil Development Company. You will shortly thereafter be advised by the Peoples Gas and Oil Development Company that the "Assignment and Agreement" heretofore executed with that Company, (a copy of which you now hold), is in full force and effect.

We again thank you for this very pleasant business association, and sincerely trust that your speculation in the purchase of leases on Frenchman Hills may prove to be profitable.

Please be assured that if we are able to be of any service to you in the future, we shall be only too happy to have you call on us.

Very sincerely yours,

PEOPLES GAS AND OIL COMPANY,

J. F. SIMONS,

J. F. Simons,

President.

[Endorsed]: Filed Oct. 14, 1942.

(Testimony of Fred Bartalamay.)

Mr. Sager: It is the basis of Overt Act No. 2. You may cross examine.

Cross Examination

By Mr. Johnson:

I bought my leases a week or two before I went to the meetings.

The statement about Dr. Meyers was at the Odd Fellows Hall in Tacoma. Quite a number of people were there. Meyers said, "I have hundreds invested where you have got one penny." I did not buy on any representations by Mr. Broome, or Mr. Meyers. I bought through Brown and Weitzel. [152]

STIPULATION RELATIVE TO TESTIMONY of CHRISTINE LEGISTROM

Mr. Hile: Your Honor, in regard to the witness, Christine Legistrom, who testified before, I understand it is stipulated by the defense that she is dead.

Mr. Simon: That is right.

Mr. Hile: And that her testimony, if otherwise proved through the reporter, would show that Plaintiff's Exhibit 229 in the last trial——

The Court: This deals with what?

Mr. Hile: This deals with Count Six of the Indictment, being what is now marked as Plaintiff's Exhibit No. 53, was received by such deceased witness in January 1936, *through* her home in

(Testimony of Christine Legistrom.)

Tacoma, Washington, through the United States Mails, and came in the envelope which is attached to the exhibit.

Mr. Simon: I will admit that Mrs. Legistrom so testified on the last trial, your Honor.

Mr. Hile: It is now offered.

Mr. Simon: I object to it on the ground and for the reason that it is incompetent and no proper foundation laid. I stipulate that the record is as counsel has suggested, with reference to the prior testimony of Mrs. Legistrom, and I admit, upon counsel's statement to me, that she is dead.

The Court: And does your admission go to that part of the testimony that had to do with the identification of the document in question and its receipt?

Mr. Simon: Oh, yes, your Honor. I admit that the witness testified as counsel has stated.

The Court: The objection will be overruled.

Mr. Simon: Exception. [153]

The Court: It will be admitted:

Letter and envelope admitted in evidence and marked Plaintiff's Exhibit No. 53.

(Testimony of Christine Legistrom.)

PLAINTIFF'S EXHIBIT No. 53

[Envelope]

[Return address]

After 3 days, return to

Peoples Gas & Oil Co.,

Fourth Floor,

4th & Pike Building,

Seattle, Washington.

[Stamped]: Seattle, Wash Terminal Sta. Jan - 11
7 PM 1936

Christine Lagerstrom

1930 No. Anderson

Tacoma, Washington

[Letterhead]

[Pencil Notation]: (6) 7-X

Peoples Gas and Oil Co.

of Washington

January 11th, 1936.

Christine Lagerstrom

1930 No. Anderson

Tacoma, Washington

Dear Madam:

We have sent you several reminders calling your attention to the past-due payments on your contract, which at this writing amount to \$15.00, but to date have received no reply. We are quite at a loss to understand the seeming lack of interest on your part, but feel it is only fair to you that we should again call this matter to your attention.

Undoubtedly, there must be some definite reason in your own mind for your failure to meet your

(Testimony of Christine Legistrom.)

payments. Whatever this reason may be, I am sure that if you will call at any of our offices, or write directly to our Executive Office—frankly stating your reasons—they can be adjusted to your entire satisfaction. Don't forget "A good heart-to-heart talk" will usually find a satisfactory solution to your problem.

We feel that you, as a citizen of our Great Evergreen Empire, are greatly interested in our work, and want to continue as a part of our Program. However, we do not want to influence you in any way to carry on with this speculation. Therefore, if you Are interested in continuing with your lease—and we certainly hope that you are—we would appreciate your contacting us immediately, in order that we may co-operate with you in every possible way.

Should we fail to hear from you in this matter within the next ten days, we can only assume that you do not wish to retain your holdings in Frenchman Hills, and we shall, therefore, have no other alternative except to cancel your contract, as much as we would regret having to take such action.

Thanking you for your expected reply, we are

Sincerely yours,

"For Oil in Washington,"

PEOPLES GAS AND OIL
COMPANY,

J. F. SIMONS

J. F. Simons, President.

[Stamped]: Final Notice

[Endorsed]: Filed Oct. 14, 1942.

(Testimony of Christine Legistrom.)

Mr. Hile: As I understand, the same stipulation is entered into with reference to the same witness, Christine Legistrom, with regard to Government's 230 in the former trial, which is now marked No. 54 for identification, and that witness is, of course, deceased, and that she did receive the letter at her home in Tacoma shortly after the date which it bears, through the United States Mails, and the letter came in the attached envelope.

This bears on Count Three of the Indictment.

Mr. Simon: Subject to the same objection as I have made to the receipt of the prior exhibits immediately preceding this exhibit, I acquiesce in what counsel has stated, your Honor.

The Court: The same ruling.

Mr. Simon: Exception.

The Court: Exception allowed. [154]

PLAINTIFF'S EXHIBIT No. 54

[Letterhead]

[Pencil Notation]: (3) 7-P

Peoples Gas and Oil Co.

of Washington

April 1, 1936

Christine Lagerstrom

1930 North Anderson

Tacoma, Washington

Dear Madam:

In checking over our records, we find that you have failed to make the payments as agreed to in the

(Testimony of Christine Legistrom.)

contract covering the purchase of a Gas and Oil Lease.

For your information, the account is now \$15.00 past due. We have sent you several reminders, and can only assume that your failure to take care of this obligation is due to an oversight on your part.

When one installment lapses and another comes along, it becomes difficult to catch up. Yet, if you take care of these payments as they fall due, you avoid the more serious difficulty of making up two or more payments.

We, therefore, ask that you kindly give this matter your immediate attention by remitting the above delinquency now, while the matter is fresh in your mind.

Your co-operation in this matter will be greatly appreciated.

Sincerely yours,

“For Oil in Washington”,

PEOPLES GAS AND OIL
COMPANY,

D. BURNIGHT,

D. Burnight, Auditing De-
partment

[Pencil Notation]: Over

[Endorsed]: Filed Oct. 14, 1942.

STIPULATION RELATIVE TO TESTIMONY
OF JENNIE M. ANDERSON, DECEASED

Mr. Hile: There is one other indictment witness deceased since the last trial, your Honor, and that is Jennie M. Anderson. I understand it is stipulated that at the prior trial she testified with reference to Plaintiff's 158, which was so marked in that trial and will now be marked 55 for identification, and that such exhibit was received by her on or about the date it bears, inclosed in the envelope, at her home in Tacoma, Washington.

The Court: That involves what?

Mr. Hile: That involves 159—it bears on Count 12; and then Plaintiff's Exhibit 56, which was previously 159 in the present trial, also came with the letter, Plaintiff's Exhibit 55, and in the envelope attached thereto.

The Court: Then both of these exhibits have to do with the allegations contained in Count 12?

Mr. Hile: Count 12, your Honor.

The Court: Any objection?

Mr. Simon: Your Honor, the same objection on the ground that it is incompetent and not properly identified and no proper basis laid. I object. I stipulate with counsel upon his assurance to me to this effect, that Mrs. Anderson is now deceased and that she did testify upon the prior trial as related.

The Court: And that her testimony given at that trial has a bearing upon the application of the document to be admitted.

Mr. Simon: As counsel has stated into the record, your Honor.

The Court: The objection will be overruled and the documents admitted in evidence. [155]

(Testimony of Jennie M. Anderson.)

Mr. Simon: Exception.

The Court: Allowed.

Letter and envelope addressed to Mrs. Jennie Anderson admitted in evidence and marked Plaintiff's Exhibit No. 55.

Letter and envelope addressed to Mrs. Jennie Anderson admitted in evidence and marked Plaintiff's Exhibit No. 56.

PLAINTIFF'S EXHIBIT No. 55

[Envelope]

[Return Address]

Peoples Gas & Oil Development Co.,
Fourth and Pike Bldg.,
Seattle, Washington.

[Stamped]: Seattle Wash. Dec 9 7³⁰ P M 1935

(4)

Mrs. J. M. Anderson &
Mr. Eric P. Anderson
912 N. Junett St.
Tacoma, Wn.

[Letterhead]

[Pencil Notation]: 7-T (12)

Peoples Gas and Oil Co.
of Washington

December 9, 1935

Mrs. J. M. & Mr. Eric P. Anderson
912 North Junett Street
Tacoma, Washington

Dear Mr. & Mrs. Anderson:

We acknowledge with thanks receipt of your con-

(Testimony of Jennie M. Anderson.)

tract for a gas and oil lease, and are enclosing herewith your signed copy.

The terms of this contract have been arranged to meet your convenience. Reminders will be mailed to you in ample time advising when your payments will be due. You may make payments to our nearest office or mail direct to our Executive Offices, whichever you prefer.

It is a great pleasure and source of satisfaction to have you become one of our leaseowners, and we wish to make an earnest plea for your active support and cooperation.

We wish to assure you that a personal visit from you to any of our offices is always welcome, and take this opportunity to thank you for this item of business in the hope that this speculation will prove of mutual benefit.

Very sincerely yours,

“For Oil in Washington,”

PEOPLES GAS AND OIL
COMPANY,

J. F. SIMONS

J. F. Simons, President.

JFS:VT

[Endorsed]: Filed Oct. 14, 1942.

PLAINTIFF'S EXHIBIT No. 56

Copy

Contract to Sell and Assign Oil and Gas Lease
This Agreement made and entered into this 22nd
day of November, 1935, by and between Peoples

(Testimony of Jennie M. Anderson.)

Gas & Oil Company, a Washington Corporation, as party of the first part, hereinafter called the

Mr.

“seller,” and Mrs. Mr. & Mrs. Eric Anderson, as Miss

party of the second part, hereinafter called the “purchaser,”

Witnesseth:

That the seller agrees to sell to the purchaser and the purchaser agrees to purchase of the seller an assignment of all of its right title and interest in and to a portion of that one certain oil and gas lease which covers, in addition to said portion, certain other lands, and the assignment shall apply to and affect only the following described tract of land: SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 31, T. 16 N., R. 25, E.W.M., containing two and one-half (2 $\frac{1}{2}$) acres, more or less, situate in Grant County, State of Washington.

The agreed purchase price is the sum of \$62.50 of which the sum of \$12.50 has this day been paid, the receipt whereof is hereby acknowledged, and the purchaser covenants and agrees to pay the balance Without Interest, as follows: in equal monthly/~~semi-monthly~~ installments of \$5.00 each, the first installment being due on the 22nd day of December, 1935, and the further installments shall be due on the corresponding day of each and every succeeding month/~~semi-month~~ until full payment is made.

Upon receipt of said payments at the time and in

(Testimony of Jennie M. Anderson.)

the manner agreed, the seller will deliver to the purchaser, his heirs or assigns, a good and sufficient assignment of said One (1) two and one-half acre lease....

This agreement is made upon condition that the purchaser will take said assignment subject to all of the terms, conditions and covenants of the underlying lease to the same extent and in the same manner as if the provisions of the said lease were fully set forth herein. The seller warrants that this lease is subject to a land-owner's royalty of ($\frac{1}{8}$) one-eighth or ($12\frac{1}{2}\%$) twelve and one-half per cent, and that the purchaser acquires a ($\frac{7}{8}$) seven-eighth or ($87\frac{1}{2}\%$) eighty-seven and one-half per cent interest in all of the gas and oil rights under this specific lease.

Upon fulfillment of all of the terms and conditions hereof, the purchaser shall, upon payment of an additional sum of Five Dollars as a fee for the execution of the necessary instruments and the recording of said lease assignment, become the sole and exclusive owner.

Time is the essence of this agreement and should default be made by the purchaser in the payment of any installments as herein provided then at the option of the seller, the entire unpaid balance shall become immediately due and payable and the purchaser shall pay to the seller all costs of collection and all reasonable attorney's fees that may be incurred or, at the option of the seller, the purchaser shall forfeit all rights to acquire the said lease as-

(Testimony of Jennie M. Anderson.)

signment and all payments made on this contract shall be retained by the seller in full satisfaction and liquidation of all damages by the seller sustained and all rights which the purchaser may have acquired shall revert and the purchaser shall be divested of all rights hereunder.

The seller shall not be responsible or liable for any inducement, promise, representation, agreement or stipulation not set forth herein, and no agent or representative of seller shall, or does have any authority whatsoever to change or modify in any manner, any of the clauses or provisions set forth in this printed form of contract, which sets forth all of the agreements of the parties hereto.

This contract is not binding upon the seller until accepted by one of its officers.

In Witness Whereof these presents are executed on the date first above written.

PEOPLES GAS & OIL COMPANY.

By WM. C. DEYO

Representative.

Peoples Gas & Oil Company.

Accepted, this 9th day of December, 1934

By J. F. SIMONS

President.

20% Must Accompany This Application

(Testimony of Jennie M. Anderson.)

Purchaser Mrs. J. M. Anderson & Mr. Eric P.
Anderson

Home Address 912 North Junett Street

City Tacoma State Washington

Business Address

City State

Telephone

Will Pay: By Mail.....at Office Office

[Fist]: All checks must be made payable to the
Peoples Gas & Oil Company

Form 4004

Contract

To Sell and Assign

Oil and Gas Lease

Peoples Gas & Oil Company

With

.....

.....

.....

Dated....., 193....

Peoples Gas & Oil Company

Suite 410, Fourth and Pike Building

Seattle, Washington

Phone: SEneca 4200

Name Mrs. J. M. & Eric P. Anderson

Address 4318 N. Balcinore St

No Leases 24093 Amount \$65.50

Date	Amt	Coll	Date	Amt.	Coll.
------	-----	------	------	------	-------

[Printer's Note: Items run to No. 26, but none
are filled in.]

[Endorsed]: Filed Oct. 14, 1942.

(Testimony of Jennie M. Anderson.)

Mr. Hile: There is one further letter on the same witness, Mrs. Anderson. It is stipulated, I understand, that she testified at the prior trial that what was then Plaintiff's Exhibit 161 and which is now Plaintiff's Exhibit 57 for identification, consists of papers she received in the course of her dealings with the Peoples Gas & Oil Company, through the United States mails at her home in Tacoma, Washington, on or about September 17, 1936; and that the letter was received in the attached envelope, the envelope attached to that exhibit.

The Court: And relates to what?

Mr. Hile: And relates to Count Eight.

Mr. Simon: The same objection that I have made to the immediately preceding two exhibits, your Honor, with the same admission concerning the death of the addressee of the letter, and the same admission that the record discloses what counsel has testified, that she did so testify upon the prior trial.

The Court: The objection will be overruled and the letter and envelope admitted in evidence.

Mr. Simon: Exception. [156]

(Testimony of Jennie M. Anderson.)

PLAINTIFF'S EXHIBIT No. 57

[Envelope]

[Return address]

After Three Days Return To
Peoples Gas & Oil Co.
Fourth Floor . . . Fourth and Pike Bldg.
Seattle, Washington

[Stamped]: Seattle Wash. Oct 16 7³⁰ PM 1936

(2)

Mrs. J. M. & Erick P. Anderson
912 N. Junett Street
Tacoma, Washington

[Letterhead]

Peoples Gas and Oil Co.
of Washington

October 16th 1936

Mrs. J. M. & Eric P. Anderson
912 N. Junett Street
Tacoma, Washington

Dear Friends:

We acknowledge with thanks the balance due on your contract to purchase $2\frac{1}{2}$ acres of oil and gas leasehold.

We have been advised by the Peoples Gas and Oil Development Company that you have assigned your lease to them under their "community plan of development" on Frenchman Hills.

Upon receipt of the \$5.00 fee referred to in Paragraph 6 of your contract with us, we shall proceed

(Testimony of Jennie M. Anderson.)

immediately to make up all of the papers necessary to substantiate the ownership of your rights, and this information will then be recorded in the permanent records of the Peoples Gas and Oil Development Company. You will shortly thereafter be advised by the Peoples Gas and Oil Development company that the "Assignment and Agreement" heretofore executed with that Company (a copy of which you now hold), is in full force and effect.

We again thank you for this very pleasant business association, and sincerely trust that your speculation in the purchase of leases on Frenchman Hills may prove to be profitable.

Please be assured that if we are able to be of any service to you in the future, we shall be only too happy to have you call on us.

Very sincerely yours,

PEOPLES GAS AND OIL
COMPANY

J. F. SIMONS

J. F. Simons,
President.

[Endorsed]: Filed Oct. 14, 1942.

DR. CHARLES E. WEAVER,

A witness called on behalf of the plaintiff, after having been duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am a geologist, employed by the University of Washington since 1907 as professor of geology. I hold the degree of Bachelor of Science from the University of California 1904, and the PhD in 1907.

I spent seven years at the University of California specializing in the technical branches of geology. My field experience I acquired in 1906 as assistant of the United States Geological Survey in Alaska. From 1909 to 1918 as geologist on the Washington State Geological Survey. From 1918 to 1925 as geologist in charge of parties for the Standard Oil of California in Central and South America.

I have made examinations in the State of Washington, as follows: In 1907 and 1908 a few weeks in the eastern part of the state. In 1908 about three and one-half months in the Bluett Pass Regions, north and south and east of the Columbia River. In 1912 in Ferry County from the northern part to the Columbia River and south of the river. 1914 in Stevens County south to the Columbia River. Again in 1917 in that county and certain areas south of the Columbia River. In this work I made geological examination of the different rock formations, their relations to each other, and their areas of distribution and recorded that information on geological maps.

(Testimony of Dr. Charles E. Weaver.)

I have also made surveys throughout southwestern Washington and in the western and northern parts of the Olympics and in the Puget Sound Basin. [157]

Durng the second half of June and again in October, 1938, I made an examination of the Frenchman Hills area at the request of the Government. Govt. Ex. 58 is a map I prepared in that connection. It consists of twelve quadrangles published by the U. S. Geological Survey, fitted together. They cover the area in question, showing the topographical features including the elevation above sea level, the position of the different streams and the towns and roads. On this map I platted all of the acreage covered by the master leases, Ex. 9, 9-A, 9-B and 9-C, locating each parcel in the particular sections, townships and ranges indicated in the exhibits, and coloring all the land covered by these master leases in orange. I had an assistant, Mr. Robert Granton, to help me. He checked them over and I then rechecked them after him. This was done before we went to the District.

On the map, Ex. 58, line A-A represents the northern line of what is known as the Frenchman Hills anticline, and B-B the south line. I also made the markings shown as C to C, D to D and 4-A. This was done after my trip to the District.

We visited and saw all the area shown, spending nearly 3 weeks going over all the roads, checking the positions of the corner stakes of the different sections, townships and ranges and examining the

(Testimony of Dr. Charles E. Weaver.)

outcrop of the rocks, and wherever there were any exposures they were plotted with respect to sections on which they occurred.

The area embraced between lines A-A and B-B represents the surface of the Frenchman Hills anticline. The line 1-A represents the axis of the anticline. Perhaps I should explain the term "anticline".

The Court. I wish you would, Sir.

A. At one time the lavas were horizontal; they were poured out upon a plain; then at a later time the entire country, including the lava, was folded up like this (indicating); and this arch is called the anticline, and the series of points along the anticline at the very highest point for any particular lava flow, that line is called the axis. [158]

The space within AA and BB marked in red lines is an area where the oil and gas would accumulate, assuming all favorable requisites for oil and gas are there.

The west end of this anticline is open. The north and south limbs do not come together, but go on across the Columbia River up into the Cascades and so the structure is not closed on the west end.

The elliptical area, marked 3-A represents a small auxiliary flexure in the synclinal fold that lies between the Frenchman Hills anticline and this south parallel one which is called Saddle Mountain anticline.

Q. What do you mean by a syncline?

A. A syncline is exactly the reverse of an anti-

(Testimony of Dr. Charles E. Weaver.)

cline. If the strata were originally horizontal and then they were buckled so that the layers originally that to down became almost horizontal and then come up again, then the line on any one lava flow that joins up points in that flow is called axis.

The area marked CC and DD represents an area on the axis of the Saddle Mountain anticline within which oil or gas would accumulate if oils were assumed to be present, and all the other ideal conditions were present beneath the surface.

The line 2-A represents the axis of the Saddle Mountain anticline. The small finger-shaped area marked 4-A represents a small auxiliary hole or anticline outside the Saddle Mountain anticline and in the flank of the syncline to the south. [159]

The east end of the Frenchman Hills structure is definitely a closed structure, meaning that the strata which are dipping down into the crust of the earth in a northerly direction in the north limb, and downward in a southward direction in the south limb, if you follow them towards the east they tend to converge exactly the same as an up-turned canoe, and they follow around the eastern end of the axis of the anticline, just as the outer side of the canoe would around the central axis of the canoe towards the end of the canoe.

With reference to the westerly end of the area marked AA and BB it is not closed.

The lava beds going from east to west keep rising.

The elliptical area, 3-A, on the exhibit, is closed

(Testimony of Dr. Charles E. Weaver.)

on both ends, but it lies right on the very border of the syncline, which means that it is a very small anticline in a whole series of beds that are dipping down at a low angle to the very bottom of the syncline.

The area CC and DD I feel is closed on the east end, but on the west it is open. It shows a definite rise upward. The area marked 4-A is closed on the west end, but the eastern end is uncertain. It is impossible to determine whether it is a closed or opened structure.

In my examination of the Frenchman Hills area I found no seeps of any kind.

Q. You found none. And with reference to your examination of Frenchman Hills, what was your conclusion as to the underlying geological composition of that structure? And upon what was that based?

A. Well, the formations exposed at the surface from the eastern end of the structure west to the Columbia [160] River are composed of basaltic layers, basaltic lava; and then upon top of that basaltic lava in places there are deposits of sand and gravel, technically called the Ellensburg formation. At one time they were widely spread, but they were never very thick, probably not over two or three hundred feet at most, but they had been largely removed by stream erosion, and then indiscriminately spread over all that. After a part of that Ellensburg formation had been removed by erosion are deposits of glacial material.

(Testimony of Dr. Charles E. Weaver.)

Q. And what examination did you make to form an opinion as to what type of structure lays under Frenchman Hills? I wish you would explain to the jury just what you did so you could arrive at what the structure was under Frenchman Hills.

A. The lavas that make up the great bulk of the Frenchman Hills, as exposed at the surface, are very widely distributed in the eastern part of Washington and they occupy an area that extends eastward nearly to Idaho, northward nearly to the big bend in the Columbia River. I mean the part that comes down south and then turns west; that comes down from Canada and then turns west. They extend up to that big bend and in some places they cross it. They extend northwest over towards Waterville, and then they extend west past—south of Wenatchee, up onto the flanks of the Cascade Mountains. They don't go to the summit. They do in the south part of the state, in the Cascades, but in the middle part they do not. They go part way up and then rest upon many different kinds of rocks.

In other words, there was a time before these lavas were formed when great areas of the eastern part of the state were composed of granite and schist, sometimes intricately mixed. [161]

Q. What is schist?

A. A schist is a rock which formerly might have been a shale; it might possibly have been a sandstone; it might have been a lava, but a rock which in some past time has been affected by the

(Testimony of Dr. Charles E. Weaver.)

inclusion of great masses of liquid rock into the crust and it caused the basing and sometimes the partial fusing of those rocks, so that a sandstone composed of many grains, the individual grain would be destroyed, and sometimes chemically changed over into some other kind of a rock, and any of the spaces in between the grains, which at one time probably existed, both would have been destroyed, and the volume of the rock would be almost one hundred percent solid rock, while in the case of sandstone there may be as much as ten or twenty percent of space in the sandstone, in between the grains.

Q. Do you know of any place where granite or schist has given rise to oil?

A. I know of no locality anywheres, and I know of no record of it in any of the public geological reports where a granite or schist have given rise to commercial quantities of oil, or given rise to any oil. There are a few cases in the world where at sometime an oil-bearing strata, an actual marine oil-bearing strata, lies up against the granite, and where there has been a fracture, and a little bit of it has oozed into that fracture; but it never was derived from the granite. It got in there from another source of marine actual oil-producing materials.

After having studied the north and the east and the western quarters of the great central plateau of Washington, my feeling is that the rocks underneath the Frenchman Hills area are almost entirely composed of granite or schist. If a well were

(Testimony of Dr. Charles E. Weaver.)

drilled down through that basalt [162] ultimately it would penetrate the base of it and enter either granite or a schist.

Q. Did you find any evidence of any formation under Frenchman Hills or from which you conclude that there lies under Frenchman Hills, any formation which would give rise to oil?

A. No, absolutely none.

Q. And, in your experience, what type of structure—periods, maybe I should say, is disclosed in connection with oil? I am thinking of that——

A. You mean the theoretical condition?

Q. Yes.

A. The cretaceous rocks up in Alberta, and in the Rocky Mountain region, they do produce oil, they are marine; they do produce oil; they have been source beds. The cretaceous is also exposed along the north side of Vancouver Island, and there are intermittently residuals of it that extend along the Canadian boundary from Puget Sound until they finally come into an area at the boundary between British Columbia and Washington, where the summit of the Cascades crosses; and that area has been published by the geological survey of Canada. It is well known. It is called technically the Basic formation. It is largely composed of sandstone. No oil seeps have ever been reported from it; and when it is followed in a south-westerly direction in the Cascades of Washington, it can be followed as a formation for possibly

(Testimony of Dr. Charles E. Weaver.)

twenty miles. But as you follow it southward the great bulk of it is a coarse sandstone or a conglomerate; and the greater part of it is not marine. And as you come farther south on it you have all the conditions showing that that particular part was the border [163] of the marine field. It was the shoreline of the marine basin, and the waters from that marine basin to the north did not come any farther south. And when you examine that area today, if you go up to it and go south from it you go right through granite and schist; and you can follow that granite and schist down on either side of Cle Elum and in the Entiat Mountains. And those granites and schists, when you follow them down, go underneath these lavas that I have just mentioned.

Therefore, I can't see any possibility of the cretaceous beds in that northern region ever having come down into this region or ever having come down more than twenty miles or possibly twenty-two or twenty-three miles south of the Canadian boundary, for the reason that the deposits there represent a shoreline deposit.

Assuming that the structure AA to BB did have a geology favorable for production of oil, the fact that it is not closed at the west end and the rise of the axis was toward the west, the oil would move up that axis and would have come out to the surface long ago.

Q. Why is that?

(Testimony of Dr. Charles E. Weaver.)

A. Because the oil and the gas tend to rise to the highest possible place in any particular formation, which is called the retaining bed, that is the bed into which it accumulates; and the water would occupy the syncline or the flanks; and under such conditions the oil would slowly long ago have moved up and come to the surface, and water would have come up onto the sides; and if drilling were put down into those rocks under those conditions, water would be obtained instead of gas and oil, under normal conditions in an oil- or gas-producing country. [164]

Q. Do I understand you to mean then, that the water pressure and gas pressure would have forced the oil to the very peak of its retaining bed.

A. Either to the peak or very close to it.

Q. And it would follow the upward slant of those lava beds until it forced its way out or came out.

A. Until it came out. That is, provided the assumed sandstone underneath had the same kind of structure.

* * * * *

A. At the place in the Cascade Mountains along the line of outcrops, where the lava comes to the surface and ends, there it rests upon sandstone; and that sandstone is called the swauk sandstone; and it varies in thickness in different places. In some places it is made up of great huge boulders of granite as large as four or five feet in diameter, all massed in together. In other places it is a consoli-

(Testimony of Dr. Charles E. Weaver.)

dated gravel. In other places it is a very coarse-grained sandstone.

Well, that accumulated to various thicknesses and then before these lavas were ever poured out, it was folded like this (indicating) and then after all of those folds had been developed and the country had been elevated above sea level, streams passed over its surface and took them down, making a sort of irregular surface; and then upon that surface there were some other lavas poured out, and then again they were slightly folded and then after that they were again eroded and that became the floor upon which these lavas at Frenchman Hills were poured out.

Exhibit 59 was drawn by me at the last trial to illustrate my testimony.

Thereupon plaintiff's Exhibit 59 was admitted in evidence. [165]

The columns on Exhibit 59 represent a sequence from the older to the younger rocks that have been formed in the eastern part of the Cascade Mountains. The schist is the oldest. It is resting upon granite because liquid rock has moved about in some way so as to come into it. The oldest rocks are schists. The granite are younger, but they represent liquid rock that has been intruded into them.

I have already testified that in my opinion the swauk formation does not extend over Frenchman Hills. Even if it did the swauk formation is not a source of oil.

I cannot say definitely whether the Teanaway

(Testimony of Dr. Charles E. Weaver.)

basalt flows into Frenchman Hills. If it did, it is not a source of oil.

I do not believe the Roslyn formation enters Frenchman Hills. Assuming that it did I think it is not a source of oil.

The Yakima Basalt is exposed over the entire area of Frenchman Hills, except where it is covered with thin layers of the Ellensburg formation or glacial material. The Yakima basalt is definitely not a source of oil.

The Ellensburg formation lies in residual patches on the north and south flanks of the Frenchman Hills, but it lies on top of the basalt. It is not a source of oil, because it is a fluvial field deposit. I mean one formed by rivers flowing over a broad expanse of territory and dropping loads of sand and gravel at intervals.

I find no evidence of marine fossils near or around Frenchman Hills. Plaintiff's Exhibit No. 60, I think, I made during the last trial.

Plaintiff's Exhibit No. 60 admitted in evidence.

[166]

Assuming that under the anticlines under the Frenchman Hills area were retaining source beds, then my statement was that the oil, which tended to rise towards the axis in the source beds would move into the retaining beds and would accumulate in a zone beneath the axis. Then assuming that there was no closure at one end the oil would try to move to higher elevations and ultimately would come out at the surface by virtue of the pressure exerted on it.

(Testimony of Dr. Charles E. Weaver.)

With reference to the portion of plaintiff's Exhibit 48, which is marked C to C and D to D that is the Saddle Mountain. In my opinion the same analysis applies there as for Frenchman Hills and that there is no oil bearing structure. The Saddle Mountain structure is closed at the eastern end and open at the Western end and the same reasoning applies as to Frenchman Hills.

I have computed from the master leases the total number of acres represented in Government's Exhibit 58. It is 132,320 acres. I have computed the number of acres lying north of line A A. It is 31,360. I have computed the area between A A and B B. This is 37,440 acres. The area shown in orange between B and C is 31,040 acres. The area marked in orange lying within 3 A I found to be 9,600 acres. The area between C C and D D, that is the orange portion, I found to be 12,960. The area within the finger-shaped drawing, designated 4 A, I found to be 3,520 acres. The portion shown in orange by the line D D not included in the finger-shaped 4 A, I found to be 6,400 acres.

I computed the area off structure as 68,800 acres.

The number of acres shown by this exhibit which were on any possible structure is 63,520 acres. I computed [167] the area as on possible structure liberally, very liberally. That applies to all the different areas considered as possible structures.

In my opinion no drilling is warranted on any findings in any of the portions shown in the area here. With all the information that I have and the

(Testimony of Dr. Charles E. Weaver.)

studies I have made, if I were making a report for an organization I would definitely turn it down.

If there was found any gas either by drilling or in a near by area, if it came from either the Ellensburg formation or the glacial formation, I would expect it to be marsh gas. That is not a petroleum gas. The chemical form is CH_4 . It can originate in oil bearing or gas bearing rock, or it can originate from an ordinary marsh or swamp.

Cross Examination

By Mr. Simon:

I was told that at some distance out, down where the Ellensburg formation is found, there was a pipe down and gas coming from the pipe. I went over to it by myself. I found no gas there at that time.

I have, in the course of my examinations, seen no oil seeps any place along the Columbia River. I have looked for them, but have been unable to find them.

I never gave much thought as to whether there was a possibility of commercial gas and oil in Eastern Washington, but as I gradually accumulated information I have gradually come around to the opinion, and in the last few years have been definite in that opinion, that it was a waste of time and money to explore for it.

I have never brought in an oil field, but I have probably saved other people from losing tremendous amounts of money in trying to develop one. [168]

I look at it this way: If I am hired by a firm to

(Testimony of Dr. Charles E. Weaver.)

examine a piece of property, I go into the area and try to secure all the geological information available and then to interpret that and then finally to arrive at a conclusion. And if I felt a company was justified in drilling, in order to test out an area, I certainly would advise it; but if I felt that the chances were very, very strong against it I certainly would condemn it. I am not prepared to say that a reputable geologist would not take the contrary opinion.

I did know a geologist named Charles T. Lupton. I never discussed with him the possibility of gas or oil in commercial quantities in Eastern Washington. I knew Dean Henry Landis, who for a time was acting president of the University and dean of the department in which geology is taught. I do not recall ever having talked to him on this subject. I understand he made a report, but I am not familiar with any publications or reports he made on this section.

I have heard of Ward Blodgett. I know Ralph Arnold. This morning I saw a letter written by him in 1936 in the form of a report on this area. I never discussed it with him. I am under the impression that he thought this was a closed structure. I have discussed this matter with Dr. Sheldon Glover, connected with one of the state mining bureaus. Professor Culver is superintendent or what would correspond in other words to a state geologist. I have never discussed with either of these gentlemen their notion as to whether or not this area constitutes a closed structure or worthy of test by drill. I know

(Testimony of Dr. Charles E. Weaver.)

Dr. Culver very well and have talked with him about a great many things, but I do not recall having discussed this situation. [169]

I knew Marcell R. Daley in his lifetime. He was a civil engineer. I do not think he was technically trained as a geologist. I do not know his opinion on any part of this area.

I have met Dorsey Hager once or twice, but never had occasion to discuss with him the geology of Washington.

I am not familiar with the works of John T. McMiken, a teacher of geology in the Lewis and Clark High School in Spokane.

I was over at the Norco Well at Wenatchee in 1938, but I know nothing about the operation. If it were shown that the core of that well at around 5000 feet definitely showed marine beds and contained marine diatoms, I suppose it might have a little bearing in my opinion. I did not try to obtain any core structure when I was there for the reason that I have seen the swauk formation from the very base to the top, and I have never seen any marine in it. The Frenchman Hills anticline extending in that direction comes more than 12 miles southwest of the Norco Well. If there were cretaceous formation at that well I do not think it would have any bearing on our question here as to Frenchman Hills, first because I would want to know whether those assumed rocks that contain diatoms are diatomaceous earth. "There are many, many marine rocks that contain diatoms that are not

(Testimony of Dr. Charles E. Weaver.)

source base for oil. In California where they are source beds they are great massive thick beds of diatomaceous earth; and they are of that extent, in order to give rise to a source. Well here there would be just that one little place that you assume in the bottom of that well south of Wenatchee, and that would not give any information concerning its extent; and three hundred feet is a very small amount of diatomaceous earth to give rise to an oil in the California regions." [170] As a matter of fact no one knows positively what is under 4-H. If the drill went through it and actually ran into oil it would be different.

Redirect Examination

By Mr. Hile:

I should say Rattlesnake Hills is roughly thirty miles from Frenchman Hills, maybe more.

I had never heard of marine diatoms found at Wenatchee until Mr. Simon made the statement here. I have been in that region. [171]

WALKER S. CLUTE,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am a geologist and petroleum engineer and have been engaged in that occupation since 1916. I

(Testimony of Walker S. Clute.)

received my training at Stanford University. Following that I was with the City of Los Angeles as deputy oil inspector. Later I was with Smith, Emery & Company, chemical and metallurgical engineers. Then for a short time with the Doheeney interests in Southern California as petroleum engineer. Then after the first World War I was in Colombia, South America on oil exploration work for about nine months. Then with the United States Bureau of Internal Revenue as valuation engineer on gas and oil properties. From 1922 to 1929 I maintained my office as consulting geologist and petroleum engineer, specializing in the valuation of oil and gas properties. Then I became connected with the Atlantic & Pacific Oil Company in Wyoming and Montana in charge of drilling and development of oil fields in Wyoming. Following that I was with the United States Geological Survey in charge of the Tulsa, Oklahoma office. Then with the state of California as chief of the Oil and Gas Section of the Tax Research Bureau of the Board of Equalization. Since 1933 I have maintained my own office in Los Angeles as consulting geologist and petroleum engineer. I belong to the Mining Society of the Southwest, the American Association of Petroleum Geologists and I am at present secretary of the Southern California Section of the American Institute of Mining and Metallurgical Engineers.

[172]

During the period I have related I was constantly doing geological and petroleum work, in-

(Testimony of Walker S. Clute.)

cluding some mining work. I had occasion to examine in this state what is known as the Frenchman Hills area and in that connection I also went to Rattle Snake Hills. That was in January, 1939. I spent about seven days in the field at that time and then again in May, 1939. I took samples of gas in two places, one on Frenchman Hills and again in the Rattlesnake Hills at certain wells that were producing gas there. The point where I took the gas on Frenchman Hills was roughly nine or ten miles west and two miles north of the Donny Boy Well of Peoples Gas and Oil. There was a small ranch house and a dug well, I should judge sixty feet, although the bottom was filled with rubble. There was a pipe that came up on one side of the well and a take-off, half inch pipe from that, and if you would hold your thumb over the one-half inch pipe you could build up a little gas pressure in the pipe—in say, five minutes. We took a jar completely filled with water, then placed a bucket of water on the ground and inverted the glass jar and lifted it near the surface of the bucket so that when a rubber hose was connected to the one-half inch pipe and ran under the glass jar the gas from the one-half inch pipe would come up and release water in the jar and you would get a jar full of gas.

Exhibits No. 61 and 61-B are two jars marked in my own handwriting used in this experiment.

At Rattlesnake Hills there were some wells sunk and they were connected to a central lead pipe that

(Testimony of Walker S. Clute.)

came into a small compressor plant. At that point the same process was followed that I have described. I filled [173] a couple of jars with gas there in the same way and sealed them with paraffin. Government's Exhibits 62, and 62-B are these jars.

I took these four jars to Los Angeles and turned them over to the Smith, Emery Company, chemical and metallurgical engineers. I turned them over personally to Mr. Cheney with the request that the gases be analyzed.

In the investigation of Frenchman Hills we had been provided with a map showing the property of the Peoples Gas and Oil Company and I directed my travels to cover as much of the territory as was shown on the map and I made my examination from a geological standpoint. Later I went to Elensburg, CleElum and to Roslyn and the territory around those towns, and made my way as far as Bluett's Pass and studied the formations.

Back in 1927 I was over in the Spokane country and took occasion to observe the granite and schist, which we call the basement rock and I observed the basaltic flow known as the Yakima basalt lying on the granite. On my inspection trip in January, 1939 up in the Grand Coulee country, I observed there also the granite with the Yakima basalt lying on that, the basalt having flown that far north and lying directly on the granite. West of the Columbia River there is above the granite a great series of distorted, broken material known as the basement complex. I observed the different formations.

(Testimony of Walker S. Clute.)

I did not see or find any formation that *would* a source of petroleum gas or oil. The swauk formation would not be a source of oil, nor would the schists, nor the granite, nor the tianaway basalt, that lay above the swauk, nor the Roslyn formation that is a coal formation. [174] Above that is the Yakima basalt and that is not a source of oil. The same is true of the Ellensburg formation. I found no evidence of a cretaceous material.

In my opinion there is no formation in the Frenchman Hills area that is a source of oil in any commercial quantity. The Yakima basalt is the predominant formation, and that cannot be a source of oil in any commercial quantities and I do not think there are other formations there that can be the source of oil in commercial quantities either.

In my experience the type of formation associated with the production of oil is that of sedimentary deposits of marine origin, meaning sea bottom deposits. I find no evidence of that in the Frenchman Hills region.

Exhibit No. 63 is a drawing prepared by me in the last trial.

Plaintiff's Exhibit No. 63 admitted in evidence.

A. I prepared this sketch to show roughly the extent of Frenchman Hills as they lie east of the Columbia river. I would say from recollection that on this sketch the length of the Frenchman Hills represented here is about 45 or 50 miles. I would have to consult my maps to make the comparison a little more closely.

(Testimony of Walker S. Clute.)

Frenchman Hills on the surface represents an uplift of the basalt, and the surface is now eroded into rather gentle hills, so the tops of the hills rise about 300 feet above the general level of the plain on either side of them. The hills extend, we will say, about 50 miles easterly from the Columbia river in that manner (indicating) and the width north and south of the hills is about 3 miles; and through the center of the hills there is observed [175] what we call an anticlinal axis; and that means that the hills themselves represent an anticline. An anticline is a geological structure wherein you see the beds of the formation dipping down from an axis on either side. In this case the axis is west and east. The formations of basalt dip down away from that axis towards the north and dip down away from the axis towards the south. That pertains almost the full length of the hills, except that at the east end also the formations of basalt are dipped eastward also so the dips in the beds run around the east end of the Frenchman Hills. For that reason I have drawn my line to indicate a rounding off of the formations at the east end. I have indicated on the map the axis and also indicated roughly the location of the Donny Boy Well, which is almost on what I consider a little bit north of the axis of that anticline, that is about a few hundred feet, 500 feet or something like that. So, to that extent, the Donny Boy well was located on the axis of the anticline in the basalt.

I found the Frenchman Hills structure closed at

(Testimony of Walker S. Clute.)

the east end, but not at the west end. The structure is not closed on the east. If gas and oil did exist in the structure that would be expected to migrate upward toward the west and escape.

The Saddle Mountain anticline is a sharp fold and the basaltic formation is lifted much higher. The folding is so sharp that I am quite sure on the north side it is broken. I consider the east end of the Saddle Mountain structure closed, but I found no evidence of closure on the west end. [176]

I found no evidence of any oil seeps in my investigation. In my opinion the gas found on the Iverson well in Section 30 on Frenchman Hills is a marsh gas. It was probably formed by the entrapment of sediments from lake formations between layers of basalt. The lava was poured out over the country in stages. There would be a cessation of flow, leaving the surface to cool for an untold number of years, when shallow lakes might be formed on the surface and vegetable matter appear there, which would be trapped under the next successive layer, forming what we call marsh gas. That is different from gas formed in what is called marine deposits.

The same is true with reference to Rattlesnake Hills, although on a larger scale. I think the gas there is also from fresh water deposits, although on a larger scale. The marsh gas is no indication of oil deposits.

(Testimony of Walker S. Clute.)

Cross Examination

By Mr. Simon:

I was accompanied on my Frenchman Hills examination by Mr. Straud. I had been at the well for a considerable period of time in charge of drilling. He had some samples of oil out in the warehouse which he showed me. They were wrapped in papers which were greasy. I looked at it and took it back later and put it under a microscope and found mostly iron cuttings off the bit. Evidently the only evidence of oil that would come out would be enough to grease the paper that it was wrapped in. There was not enough for a real test. It did not spell anything to me in the way of oil in commercial quantities.

If in drilling they encountered sand that contained a petroleum substance and if you determined that [177] it came from a marine origin, well that would upset all the geology we think about in that region. It would indicate marine sediments, which would raise the question where did an arm of the sea come from. The presence of petroleum oil would not make the presence of marine deposits necessary. Shales from even fresh water deposits very often give colors of oil far from commercial quantities. If a core were obtained in drilling containing petroleum of an asphalt base, if it had enough liquid petroleum in it to make a test, personally I would begin to suspect marine formations. I would look to see if there could be a marine deposit. It is humanly impossible to see down through

(Testimony of Walker S. Clute.)

the ground on Frenchman Hills and we have to draw conclusions from surrounding circumstances. If right at Wenatchee at a depth under 4500 feet, after the drilling had been in continental sedimentaries, the hole showed that from that point they were sediments of marine origin, I would be very much interested and would give it all consideration. I would want to know what the extent of this was. I would want to know if it was absolutely proved marine origin and investigate it very thoroughly. I am aware that there have been cases where commercial fields of oil or gas had been brought in even through the preponderance of geological opinion had been against the possibility of finding oil or gas in that particular place.

Re-Direct Examination

By Mr. Hile:

It is sometimes advantageous in drilling to introduce oil into a well because of friction the driller may use oil instead of mud to serve as the lubricant.

If it were a fact that at Wenatchee some [178] marine diatoms had been found in drilling that would be the merest fragment of evidence to start on. The thickness of the marine formations would be a great factor. Thickness of 500 feet of diatomaceous shale extending laterally over 100 square miles would be a consideration. Then there must be a structure of anticlinal, domal form so that oil would be gathered together and there would finally be enough of it to pump out. Just the presence of some diatoms at one place without knowledge of

(Testimony of Walker S. Clute.)

the thickness or the extent would not spell oil in commercial quantities.

The major oil companies and operators do maintain staffs of petroleum geologists to advise them where to drill. We know also that their advice must be limited and they will come to a point where they will stop and say: "This is as far as I can tell you. In my opinion now, and from a study of the territory you will have to drill—" The same thing applies to geophysics and they must stop and say: "This is all the information we can give you. You will have to drill to find out whether there is oil in commercial quantities". [179]

GOUGH L. CHENEY,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am chief chemist with the Smith-Emery Company in Los Angeles and have held that position since the end of the first World War. I received my technical training at the Iowa Wesleyan University. I left there in 1911 and thereafter was employed as chemist in Panama Canal and Central America before coming to the Smith-Emery Company in 1916.

In the course of my work I have made hundreds of analyses of gas and oil. Government Exhibits 61 and 61-B are glass jars which I received from Mr.

(Testimony of Gough L. Cheney.)

Clute, who has just testified. They were filled with gas and sealed with paraffin.

I also received Government Exhibit 62 and 62B from Mr. Clute.

My notes show that Exhibit 61 and 61B, Frenchman Hills samples, were of the following contents: Carbon dioxide .20%; oxygen .20%, methane 61.50%, ethane none, nitrogen and other inert gases 38.10%; the total 100%.

In my opinion, as chemist, this is not a petroleum gas; petroleum gas contains ethane and other heavier hydrocarbons.

In analyzing the gas from the Rattlesnake Hills samples, Government Exhibits 62 and 62B, I found it contains dioxide .10%; oxygen 3.40%; methane 76.40%; ethane, none, nitrogen and other inert gases 20.30%, total 100% by volume. [180] In my opinion as chemist that was not petroleum gas. These gases were typical of marsh gas. That is not a petroleum gas. It consists largely of methane and is a result of the oxidization of organic matter.

Cross Examination

By Mr. Simon:

It is true that marsh gas is largely of fresh water origin and petroleum gas of salt water origin. Such gas comes from recently laid down deposits, which are changing, breaking down into simpler constituents.

There was no ethane in either of the samples submitted to me. *There* contents were substantially alike. This type of gas will burn and can be used

(Testimony of Gough L. Cheney.)

for domestic and manufacturing purposes if available in commercial quantities. These samples were handed to me by Mr. Clute personally. [181]

MALCOLM SCOTT,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

For a good many years I followed the drilling business. I worked at one time for the Peoples Gas and Oil Company, or the Peoples Gas and Oil Development Company.

I first met Mr. Broome in the spring of 1933 and saw him again in the spring or 1934, or in the fall of 1933 in Seattle. I met Mr. Simons and one of the Markowitz brothers in the spring of 1934. I had a conference with Mr. Simons in the presence of Mr. Broome. We discussed the equipment that was necessary to drill the well and the camp equipment, the method of drilling the well and tools that would be employed. I would say that was in April, 1934 in the office of the Peoples Gas and Oil Company in Seattle.

Thereafter I was employed by J. F. Simons. Before employing me he wanted to know what experience I had had in oil well drilling. My salary was discussed. He then employed me at \$250.00 per month. He said Mr. Broome and I would

(Testimony of Molcolm Scott.)

make a trip to Wyoming and would pick out the drilling equipment. That, I think, was in the first part of August, 1934.

Mr. Broome and I made a trip to Wyoming and from there to Denver. In Denver we joined Mr. Simons. We picked out the additional equipment that was not available in Casper, Wyoming. It was selected in Denver. Then Mr. Simons, Mr. Broome and myself returned to Casper, Wyoming.

On the way I discussed with Mr. Simons the [182] location of the well, the size of the well to be started and equipment. Mr. Simons was of the opinion that it would be more economical to drill a small hole. I argued him out of that because the objective could not be reached by starting a smaller hole. Mr. Broome told me it was the consensus of opinion among geologists that there was a minimum of from 2500 to 3000 feet, but probably a maximum of 4000 feet of basalt to go through.

We dealt with the same company in Denver as at Casper, Wyoming for the equipment. Mr. Simons closed the deal in Casper. Simons then took the train for Seattle. Mr. Broome and I drove back. Mr. Simons told me that I was to receive my instructions from him through Mr. Broome. I talked with Mr. Simons several times thereafter in Seattle regarding the camp equipment, when we were to start the construction work and various things along that line. Simons wanted the camp laid out so as to make it attractive, as he expressed it, "So it

(Testimony of Molcolm Scott.)

would make a good front." The camp was then constructed under my supervision.

I should say that the value of the original equipment that came in was approximately between \$4000 and \$5000.

We started drilling about the first of December, 1934 in the validation hole that had been drilled previously. I think it was approximately 80 feet deep. The equipment we bought and installed was standard cable tool equipment.

I remained until the first part of March, 1935 as superintendent of drilling. There was then a 22 inch hole, about 315 feet deep. We were drilling on basalt. Most of it was very dense and hard. No gas was struck during the course of drilling nor any oil bearing sands. [183] I was paid by the Peoples Gas and Oil Company. I cannot remember that I received any checks from the Peoples Gas and Oil Development Company.

Government's Exhibit 64 I received by mail at Ephrata, in payment of salary and things I paid out for the commissary while working for the Peoples Gas and Oil Company.

Four checks payable to Mr. Scott admitted in evidence as plaintiff's Exhibit 64.

Cross Examination

By Mr. Simon:

I understood the validation hole about 80 feet had been drilled by a Mr. Hoff a year or so previously under Mr. Broome's direction. It was a

(Testimony of Molcolm Scott.)

ten inch hole and I drilled it out to take a 22-inch casing. I estimated three years as the length of time necessary to go through the minimum of basalt.

There was a difference between Mr. Broome and myself in March, 1935. The hole was crooked, but I told him it was due to a column of basalt having drifted over into the drill hole. He took me to task for not having reported it.

The rig installed was standard cable drilling equipment in good condition. We built a good, comfortable, substantial camp. We ran a day shift for two or three weeks and then started on a 24-hour daily. The men were in earnest in their attempt to drill the structure. As a matter of fact Broome was obsessed, he was "hole crazy".

Re-Direct Examination

By Mr. Hile:

The hole had drifted over so that the tools would catch and the bailer would catch. It was necessary to shoot the obstruction out of the hole. I do not think that the drilling was continued in that hole.

[184]

I met Dr. Meyers once in the lobby of the 4th Avenue Building. Mr. Broome introduced me. I did not have much of a conversation with him. He just acknowledged Mr. Broome's introduction and we discussed ordinary topics. [185]

KENNETH C. STROUD,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

I am a well driller and was employed in drilling on Frenchman Hills. I believe I was employed on April 23, 1935 by George Hogan, who was superintendent. At first I did welding and tool dressing. When the rotary started I went to the rotary driller and remained the rest of the time until they stopped drilling in August, 1938.

We went through basalt all the time. When I first started the hole was not off vertical. I think I first observed it as off when 300 or 500 feet. As drilling continued it grew worse and went off at a steeper angle. In the years 1935 and 1936 it seemed to be off about 24 degrees. It kept going off further. Towards the last it ran about one degree to hundred feet. We were then drilling with a shot drill, rotary drill. When we finally quit drilling the hole was off, I believe, 33 degrees, and still going off. We kept records during the time we were there. Government's Exhibit 65 is the daily log of the well.

The hole being drilled while I was employed was started with the validation hole. The location was shifted west about 20 feet and a new hole started there. That is the one I drilled.

Cross Examination

By Mr. Simon:

I had known George Hogan, the drilling super-

(Testimony of Kenneth C. Stroud.)

intendent, under whom I started, since 1932 when he was in Montana and I worked under him. He was a competent [186] drilling superintendent. I never was told to do other than give my best efforts to drill the hole, and that was true, as far as I know, of every member of the crew. The same crew continued after the indictment was returned when operations continued under the receiver. I continued to work for the receiver and was paid by him for a year. Except when we had fishing jobs we continued to drill.

I believe we encountered some gas in the latter part of 1937 or the first part of 1938 while I was working for the receiver and we encountered some heavy stuff that looked something like graphite, that one could scrape off the core barrel. I believe that was in 1937.

We used oil to loosen the tools when we got stuck and of course there was of lot of that left on the sump which was picked up by different people. "And the stuff that would be baled out, they would take off in jars, but of course it wasn't liquid". It was pulverized, shot and everything mixed up in it. It was oily. That is about all you could say about it.

At the previous trial I identified Government's Exhibit 326, a piece of basalt core from three or four feet high which I said was the last core that had been taken out of the well at a depth of 4,575 feet. This basalt is very hard and the hardest part about it is that it fractures so badly. Mr. Ward

(Testimony of Kenneth C. Stroud.)

Blodgett was consulted and gave instructions with reference to drilling in the best possible way.

Re-Direct Examination

By Mr. Hile:

I do not remember any gas being encountered prior to 1937. The graphite substance that was encountered [187] seems to me was in 1937 sometime. I am not positive. There was not much gas. It only showed up one day. There was no pressure that blew tools out or caused any difficulty. The only way we could detect it was when it got into the settling ditch. That would give the bubbles time to get to the top and we could set it on fire.

People took oil that had been introduced into the hole to free the tools. A lot of people picked it up out of the ditch. I believe we had to introduce oil to loosen the tools on two or three occasions. Of course, the farther off the hole went the more friction there was. We could not have drilled much further than we had. "You see when it gets too far your shot won't carry up around your barrel."

Recross Examination

By Mr. Simon:

I believe Mr. Revett was over there when we got the graphite-looking stuff and they took some samples I believe at that time. I think it was in the spring of 1938.

I remember one day Mr. Broome got a sample of the stuff. Broome worked for the receiver for a

(Testimony of Kenneth C. Stroud.)
time. (The core from the well was admitted in evidence as Defendant's Exhibit A-33. Counsel stipulated that later a photograph of it might be substituted.) [188]

CLARENCE BELLES,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I live at Centralia, Washington. I am a janitor by occupation. I bought leases from the Peoples Gas and Oil Company sometime in June, 1935—two and a half acres.

In Plaintiff's identification No. 66 the top document is a contract on an oil lease. The others are correspondence. I received these various instruments and letters by mail. Plaintiff's Exhibit 66 admitted in evidence.

Government's identification No. 67 I received by mail, including the envelope attached. The letter came in the envelope and was addressed at my address in Centralia in connection with my dealings with the Peoples Gas and Oil Company. It is dated August 12, 1936. I must have received it about the next day. Thereupon Plaintiff's Exhibit 67 admitted in evidence, after objection had been made on the grounds it was incompetent, irrelevant and immaterial and not properly identified and no proper

(Testimony of Clarence Belles.)

foundation laid, which objection was overruled and exception allowed.

PLAINTIFF'S EXHIBIT No. 67

[Envelope]

[Return Address]

Peoples Gas & Oil Development Co.,
Fourth and Pike Bldg.,
Seattle, Washington.

[Stamped]: Seattle, Wash. Aug 12 7 PM 1936 3
Mr. & Mrs. Clarence Belles
207 No. Buckner
Centralia, Washington

[Written in ink in longhand on reverse side]:
Clarence Belles, 124 N. Buckner St. Centralia,
Wash.

[Letterhead]

[Pencil Notation]: O A 3

Peoples Gas and Oil Development Co.
of Washington
August 12th, 1936

Mr. and Mrs. Clarence Belles
207 N. Buckner
Centralia, Washington

Dear Friend and Partner:

Having completed payments on your contract with the Peoples Gas and Oil Company, the leasehold acreage which you purchased from them has been assigned directly to us, thus avoiding the needless complication of putting it through your name. I am pleased to advise that this now completes our

(Testimony of Clarence Belles.)

arrangement with you whereby you agreed to turn your lease over to us for development purposes, and enables you to be in our fully participating "Community Plan of Development."

The executed copy of the "Assignment and Agreement" heretofore delivered has up to now been the only evidence of those participating rights, but to many people this has not been satisfactory for the reason that in case of the sale of all or part of such rights, they were called upon to undergo considerable expense and were confronted with a great deal of red tape and all sorts of complicated legal requirements, necessitating, in many instances, long and intolerable delays.

It has always been my sincere wish that nothing be left undone which would tend to serve the best interests of the P. G. & O. Program, as well as the greater convenience of my partners, and I certainly feel that all of my partners, including yourself, are entitled to a different and more easily negotiable evidence of their rights, free from any costly red-tape.

In order to bring this about without changing in any way the respective interests of all parties concerned, this company has been converted into a leaseholders' company. The actual drilling operations have been transferred to a company, formed by Dr. Meyers and myself, and known as "Peoples Drillers, Inc." Under this arrangement, no one may be in

(Testimony of Clarence Belles.)

the Development Company except owners of participating rights such as yourself.

The Development Company owns the leases, and the full proportionate share previously agreed upon will be distributed to holders of participating rights, Namely, Sixty-five Per Cent of the Net Returns Received from Production,—under the same conditions as set forth in the “Assignment and Agreement” which you executed with this company.

In the furtherance of the above plan, the Development Company, by a resolution of its Board of Directors, authorized the issuance to holders of participating rights, residing in the State of Washington, no-par-value shares of the Peoples Gas and Oil Development Company, on the basis of eight (8) shares for each acre assigned, so that each holder of a participating interest will be certain to receive the number of shares to which he is rightfully entitled, and which in every case will be equivalent to the interests now held under the “Assignment and Agreement” with this company.

These shares are Non Assessable, and carry full voting privileges, and their issuance has been officially authorized by the Director of the Department of Licenses, State of Washington, under Permit issued on June 15, 1936.

It gives me great pleasure to advise that at a recent meeting of the Board of Directors, Mr. E. W. Jorgenson, former editor of The Spokane Press of Spokane, Washington—long a champion of the peo-

(Testimony of Clarence Belles.)

ple of our State—was unanimously elected as Vice-President and Treasurer of the Peoples Gas and Oil Development Company. I shall continue to serve my partners in the capacity of President of the Development Company, and shall also continue in direct charge of our operations in Frenchman Hills as Vice-President of Peoples Drillers, Inc.

I should like to point out that in the past, before transfer of a portion or all of a participating right could be completed, it was necessary to make an assignment in triplicate before a Notary Public, incorporating legal descriptions, which frequently had to be passed upon by an attorney; then submitted to an abstractor for his verification, and finally recorded in the county in which the leasehold is located. Obviously, this procedure not only entailed considerable expense, but also required a great deal of time.

I have never lost sight of the important fact that when one of my partners transfers a part of his rights to someone else, a new friend and supporter of the P. G. & O. Program is thereby automatically created, and under the new plan you will be in position to make such transfer on practically a moment's notice by simply signing your name on the reverse side of the certificate in the presence of a witness. This is only one of the many advantages of having in your possession a more negotiable instrument, and is mentioned merely to give you some idea of the benefits to be derived by you.

(Testimony of Clarence Belles.)

Please understand that if you prefer you may retain the executed copy of the "Assignment and Agreement" which you now hold as evidence of your ownership of a participating interest. However, in view of the fact that in the acceptance of the above shares your rights are Exactly the Same as you now have, inasmuch as they entitle you to Exactly the Same pro rata returns, I am sure that you will readily recognize the advantage accruing to you under the new arrangement.

Feeling certain that you will unquestionably wish to make this change as soon as possible, I am attaching hereto the proper form enabling you to receive your certificate for the number of shares to which you are entitled. If you will sign this form and return to us, Together With the Copy of the "Assignment and Agreement" Now in Your Possession, we shall have your certificate issued and forwarded to you without delay, and at absolutely no cost to you.

In consideration of the many thousands of interest holders who will, undoubtedly, be anxious to receive their certificates with a minimum of delay, I ask that you send in these two papers immediately, so that our office force may function with the greatest possible efficiency.

A stamped, self addressed envelope is enclosed for your greater convenience in returning these papers to us.

(Testimony of Clarence Belles.)

Thanking you again for the friendship, loyalty and confidence which you have so graciously extended towards our undertaking on Frenchman Hills, and assuring you that I shall always strive to serve the best interests of the P. G. & O. Program and all of my partners, I am—with every good wish

Your sincere friend and partner,

BILL BROOME

William A. Broome,

President

Peoples Gas and Oil Development Company.

P. S. We have made arrangements with the Peoples Gas and Oil Company so that you may receive the free services of a Notary Public at any of their offices in the execution of the necessary papers.

WAB-S

[Endorsed]: Filed Oct. 15, 1942.

I received notice of stockholders' meetings both before and after the appointment of the receiver.

Cross Examination

By Mr. Johnson:

I bought these leases on the speculation that we might get oil and might not. That was understood when I bought it. [189]

SARAH EVERETT,

a witness called on behalf of the plaintiff, after having been duly sworn, testified as follows:

Direct Examination

By Mr. Sager: I live at Seattle, Washington. My husband is dead. I lived there in 1934. I bought leases from the Peoples Gas and Oil Company through Sam Markowitz. I received Plaintiff's Exhibit 68 from Mr. Sam Markowitz. It bears his signature signed in my presence. That was my contract for leases. I paid \$10 down and was to pay \$10 until I got it paid. I paid in Mr. Markowitz' office; it was in the Peoples Gas and Oil Company office.

Plaintiff's exhibit 69 is receipts for money that I paid on this and other leases to Sam Markowitz. Plaintiff's exhibits 68 and 69 admitted.

Sam Markowitz called me to take more leases about a month after I got the first one. He wanted to know how much money I had so that they could get out more leases for me. I told him I had some in Seattle and some in Port Angeles and he wanted to see my book. When he saw it he wanted to take it over to Port Angeles. It was somewhere around \$900 at Port Angeles. He took the book over there and when he came back he said he could get 50% of it. He made out leases for forty acres. When I told him that I thought twenty acres was all that they allowed one person he said I can fix that, I can put your middle name for twenty acres, and your

(Testimony of Sarah Everett.)

first name for twenty acres, and that is the way he drew it up. Plaintiff's Exhibit 70 is what he made out and I received them from him at that time. [190]

Two leases to Mrs. Sarah Everett admitted in evidence as plaintiff's Exhibit 70.

To pay for the two leases he took the money that he got at Port Angeles. He gave me something like \$14 as the balance left after what he took.

Mr. Sager: One lease is dated July 20, 1934 to Mrs. Sarah F. Everett for fifteen acres more or less. The price is \$187.50 and it is marked "Paid in full." It is signed by Sarah F. Everett and also signed "Peoples Gas & Oil Co., by S. Markowitz and Fisher"—I can't make out the initials.

The other lease is dated the same date, July 20, 1934 for twenty acres, the sum of \$250, marked "Paid in full" and it is signed by S. Markowitz and Fisher and also S. Frances Everett.

I talked with Sam Markowitz later. I used to go to his office once in a while. He said it looked good to him and he thought I would be all right if I invested in this. I was then working in a home. I am not able to work now.

I used to attend meetings of the Peoples Gas and Oil Company. I heard Broome speak when Dr. Meyers was there. Broome introduced Dr. Meyers as his friend, the one that was always back of him and had the money for everything. He said Meyers built the bridge in California and was going to build a tunnel between here and Spokane. He said Meyers had all kinds of money. All he had to do was just

(Testimony of Sarah Everett.)

to show him the bill and he was ready to pay it. Meyers talked and I think said that was right, he was going to stand by Broome to the end. I do not remember all he said.

I had nothing left in my account at Port Angeles after buying the last two leases. [191]

Cross Examination

By Mr. Johnson:

I bought the leases solely on the representations of Sam Markowitz. I never discussed the matter with J. F. Simons, William Markowitz or Mr. Meyers.

The account I turned over to Sam Markowitz was a savings and loan account. They were doing business the last I heard of it. I never asked for my money back from William Markowitz or Mr. Simons or anyone.

I bought five acres first and then they put the others on all at the same time in two names, each for twenty acres. I had not seen Dr. Meyers or heard anything about him, at that time. Sam Markowitz told me that he was placing two twenty acre leases in two names because it was against the policy of the company to sell more than twenty acres to one name.

Redirect Examination

By Mr. Sager:

Between the time of purchasing the five acre lease and the other purchases I attended public meetings and heard Broome speak. I don't remember whether

(Testimony of Sarah Everett.)

Broome said anything about Meyers or not at that time, but I think it was later. I relied on what was said.

Recross Examination

By Mr. Johnson:

I attended public meetings before July 20, 1934 and before I bought the first five acres. I saw Sam Markowitz at a public meeting at a building which they used before they went to the Moose Hall in Seattle. The first lease I bought was on June 29, 1934, the second was July 20, 1934. I did not see or hear Dr. Meyers before that time, nor did I know anything about him before that time. I did not rely upon any representations concerning Dr. Meyers. [192]

RALPH ARNOLD,

a witness called on behalf of the plaintiff, after having been duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

My occupation is that of geologist. I have pursued that occupation about 45 years. I am also a petroleum engineer for about thirty five years. My experience is rather extensive, covering several states in the United States, Mexico and Venezuela and Trinidad in South America. I met defendant Meyers sometime in early 1936 in my office at Los Angeles. Mr. Myron Zandmer was present and

(Testimony of Ralph Arnold.)

introduced the defendant. He had told me about Dr. Meyers before he brought him into the office.

The conversation related largely to the possibility of my doing work for Mr. Meyers in the development of new oil and gas fields. He said he was interested in such developments and had a well drilling in Washington. He told me he was capable of financing anything reasonable in the way of an oil and gas project. He mentioned no one except himself as financing the project in Washington.

Next I met defendant Meyers at the Olympic Hotel in Seattle about August 21, 1936. Mr. William Broome, and William Markowitz were present. I do not remember Mr. Simons at that time. The discussion was that Dr. Meyers and Mr. Markowitz were anxious to have me go over and examine the well and give them a report on what I thought were the oil and gas possibilities. Dr. Meyers said that he would be responsible for my expenses. I would say that Dr. Meyers [193] said he was interested in financing a well and Mr. Markowitz said he was interested in financing the well also. There was nothing said regarding sale of leases to the public.

Next morning we drove over to the well and arrived in the afternoon. I found Mr. Glover of the State Geological Survey there. I made examinations in the area from two or three o'clock in the afternoon until four or five o'clock the next day, going also to the Rattlesnake territory. Upon returning to Seattle I met the same men as previously. Dr. Meyers was there. The discussion covered the

(Testimony of Ralph Arnold.)

conclusion I had reached. I told them that the structure of the region of the well was favorable for the accumulation of gas or oil, but I had seen no evidence to change my opinion that there was practically no possibility of oil. I did think there was a good possibility of gas if they could reach it, but I thought the Rattlesnake Hills was much shallower than they would find their well and told them I thought they were spending too much money by drilling too big a hole, that gas was not as remunerative as oil and if they were going to make money by developing a gas field they would have to find means of drilling much cheaper than the drilling they were doing although I congratulated them on their fine equipment.

I told them that I thought the gas would be a marsh gas or coal gas because I thought the gas came from the Roslyn formation which contained coal over at Roslyn, and also was a show of carbonaceous material, such as palm leaves and things of that kind, which generate what we ordinarily call marsh gas.

I prepared a report along the lines of the oral report that I had given and addressed the report to Dr. Meyers. I have a copy. Government's Exhibit 71 I would say was the original copy of my report. I recognize my signature. [194] I think it was prepared in Los Angeles, and the photographs developed down there. A copy without the photographs was handed to Dr. Meyers before I left.

I did not know at any time prior to making the

(Testimony of Ralph Arnold.)

report that the public was interested in this project.

It was important before making the report to know the condition of the hole.

Q. (By Mr. Hile): And what was your information before you made your report as to whether the hole was vertical or not?

Mr. Simon: I object to that as irrelevant and immaterial, as far as the defendant Meyers is concerned, unless it be shown that the information came from him or sources over which he had some control, as incompetent and hearsay.

The Court: Overruled.

Mr. Simon: Exception.

Q. (By Mr. Hile): What information did you receive?

A. I was told by Mr. Hogan and also by Mr. Broome that the well was not over 2° off vertical.

Mr. Simon: Who was the first man he mentioned?

Mr. Hile: Hogan.

Mr. Simon: Now I renew the objection and move to strike the answer on the grounds first stated.

The Court: Motion denied. Proceed.

Mr. Simon: I want to point out to your Honor that——

The Court: I don't care for any argument.

Mr. Simon: Unless your Honor overrules, I am going to insist that I be given an opportunity to explain fully the basis of my objection.

(Testimony of Ralph Arnold.)

The Court: I thought we had this very clearly in mind. I think the record will show that I advised counsel at the very beginning, well along at the beginning of this trial, [195] that after the Court has made a ruling and allowed an exception, upon that particular matter, unless the Court feels that he wants further information, I don't want argument.

Mr. Simon: I have no desire to argue at all. I merely want to point out that the two men he mentioned, one of them was never a defendant; and as to the other, he has been acquitted.

The Court: Proceed.

Mr. Simon: Exception.

I was told by Mr. Hogan and also by Mr. Broome that the well was not over 2° off vertical. Mr. Hogan was the superintendent in charge of the well at the time of my trip there. Respecting the statement on page 3 of the report, "I am advised that a gas flow was encountered in your well at around 100 feet". That information was given me by Mr. Broome. He also gave me the information that, "The gas so far reported tested about 900 B.T.U., which is a good quality of natural gas."

I had a conference relative to publishing my report with Mr. Markowitz and Dr. Meyers. I think Dr. Meyers asked me if I had any objections to having the report published in the papers. I told him the report belonged to him and if it was handled properly I saw no reason why they should not publish it.

(Testimony of Ralph Arnold.)

In my opinion there is no source of oil under Frenchman Hills. The origin of oil has been pretty definitely traced to diatoms—microscopic plants that live in the ocean and also sometimes in fresh water lakes and also to certain forms of animal life and fish. I have in my investigations in the Frenchman Hills region seen no evidence of source beds except woody material, the coal and things of that kind that would produce gas, but nothing that would produce oil. That would be a marsh gas. [196]

I have found no oil seeps anywhere in the State of Washington except on the Olympic Peninsula.

One well is seldom sufficient to test any structure. How many would be required is hard to say. In the well known as Kettleman Hills field in California, there were 21 wells drilled before the first producing well was brought in. I found a similar condition in Montana, where I was connected with the development of two or three oil fields. "So, one well or two wells or maybe half a dozen wells is not an adequate test of any particular area".

I did not know of "Peoples Progress" until a copy was sent me by some friend here in Seattle. If I had known that the well was crooked to the extent of 15° or 17° my report would have been less favorable. I thought the well was poorly located on the structure. It should have been at least one-half mile or three quarters of a mile farther south. That, in connection with the inclination of the well from the vertical would have made me inclined to

(Testimony of Ralph Arnold.)

recommend drilling a new hole rather than continuing the hole.

I learned after I had given my report to Dr. Meyers that leases had been sold to the public. I wrote a letter to Mr. Broome when I found out that I had been misinformed as to the condition of the hole.

Q. That is what I mean. Handing you what is marked as Government's 72 for identification, I will ask you what that is, if you know?

A. I believe it is a copy of a letter that I wrote to Mr. Broome on November 30, 1936.

Q. That is a copy of the letter. And was it in your possession, that copy? A. Yes, sir.

Mr. Hile: I offer it in evidence, if the Court please. [197]

Mr. Simon: I object to it.

The Court: Let the defendant see it.

Mr. Simon: I haven't seen it either, but I object to it for the reason and upon the ground that it is entirely hearsay. Here is a letter which contains——

The Court: I wish counsel would just interpose his objections without statements. I don't want— The jury, of course, has been instructed repeatedly and will be instructed to disregard the matters that are not evidence, because they are trying this case upon the facts, and not upon argument or statements made by the Court or counsel. But my purpose, and I want to advise counsel if he will interpose objections and state his reasons, then if

(Testimony of Ralph Arnold.)

the Court sustains them, well and good. If the Court overrules them an exception is taken. I want you to protect your record in every way that you can, but I am not asking for a general statement other than, and particularly in this case, the basis of your objection briefly stated, that it is incompetent, irrelevant and immaterial, and I will pass upon that.

Mr. Simon: I am trying to state——

The Court: The contents of it, after you read it, if there is some particular phase of it you want to call the Court's attention to,——

Mr. Simon: The basis of my objection, your Honor, has nothing to do with the contents of the letter. The basis of my assertion of incompetence is that the contents of a letter mailed to someone is, as to the recitals therein, not evidence. The only purpose for which it can be received, as I understand the law, is in the light of—in order that the answer which the addressee makes may be interpreted in the light of the original letter. Now, for that purpose, in this particular case this letter was addressed to Mr. Broome, who [198] has been acquitted in this case and is, consequently, not a party conspirator. That has been established.

The Court: That is true.

Mr. Simon: And as a consequence, no admission of Mr. Broome's could bind any of the other defendants. And upon that double ground of hearsay, I object to the admission of this.

The Court: I am quite conscious of that phase

(Testimony of Ralph Arnold.)

of the objection, Mr. Simon, and I will overrule the objection.

Mr. Simon: Exception.

The Court: It will be admitted.

Letter to Broome from Arnold admitted in evidence and marked plaintiff's exhibit 72.

PLAINTIFF'S EXHIBIT No. 72

(Copy)

Ralph Arnold

Consulting Geologist and Petroleum Engineer
639 South Spring St. Los Angeles, Cal.

Cable: Ralfarnoil

42 Broadway, New York, N. Y.

Code: Bentley's

Los Angeles,

November 30, 1936

Mr. W. A. Broome,
President, Peoples Gas & Oil Delv. Co.,
410 4th & Pike Building,
Seattle, Wash.

Dear Sir:

Some three months ago I was called by your company to investigate your operation on Frenchman Hills, Grant County, Washington, and to make a report to you in reference to that work.

I inquired of Mr. Hogan, in your presence, as to many conditions of the well, amongst which was the angle of the hole. I was told that you had a straight well, in that it was within 3° vertical. I reported that the well was located approximately one-half mile north of the crest of the structure.

(Testimony of Ralph Arnold.)

However, in view of the fact that the well was reported to me as being practically vertical, I did not make an adverse report. Since that time I have learned that the well was in excess of 20° off vertical at its present shallow bottom and that it had passed the 3° angle way above the cementing point of the water string

This is merely to advise you that had I known of the true condition of your well I would never have given you the favorable report which I did. Furthermore I wish to state that I am far from happy over the treatment which my report receives in your propaganda sheet "The People's Progress". The existence of your paper was not disclosed to me nor was the plan of publishing my report in such a publication.

Yours very truly,

RA-MS

[Endorsed]: Filed Oct. 16, 1942.

Mr. Simon: I desire, if the Court please, to make a further objection upon the ground that this is hearsay, the end of the second paragraph of the letter, which shows that the contents of the letter itself is hearsay.

The Court: The objection will be overruled and exception allowed.

The basis of my objection to the publication of my report was that only excerpts were taken and published instead of the full report.

(Testimony of Ralph Arnold.)

Cross Examination

By Mr. Simon:

I was employed by Dr. Meyers in August of 1936 to make a survey and give him a fair and impartial opinion as to the condition of the well and as to the prospects over there. I did not call Dr. Meyers' attention to the fact that the well was crooked because I assumed that it was in good condition after what they told me. I relied upon the statements of Mr. Broome and Mr. Hogan. As far as I knew Mr. Hogan was a competent drilling superintendent. [199]

Mr. Zandmer, whom I mentioned, was a geologist and petroleum engineer, graduate of Stanford University and as far as I knew was reliable and honest. He told me he was consultant geologist for Dr. Meyers' work over there. I did not believe they could find oil because I was not aware of the existence of any marine sedimentaries which are essential to oil, but I did give as my opinion that there was good possibility of finding commercial natural gas. No one can tell what is under the basalt except by drill. I did report that "I considered Frenchman Hills the most simple and regular of the anticlinal folds examined," and I did say as my conclusion,

Q. "Conclusions. You are to be congratulated for your courage and public spiritness in carrying forward the drilling of this well. You are operating in an unproven region, as far as known important gas deposits are concerned. If you en-

(Testimony of Ralph Arnold.)

counter substantial quantities of gas at reasonable depths, you will open up an area for development that may include not only thousands of acres along the crest of Frenchman Hills, but also large areas along the anticlines to the north and south of these hills. The work you are doing is a distinct, scientific contribution to the State of Washington, in addition to its economic possibilities.”

Offer of defendant’s exhibit A-32 renewed, but rejected.

I mentioned information that a well in Section 30, Township 18, North, Range 26 East had produced gas for twenty-one years, and that I had been advised a gas flow was encountered in the Frenchman Hills at around 100 feet. That information was given me by Mr. Broome.

There are wells along the shore in California that are purposely made at an angle in order to reach oil underneath [200] the surface of the sea, and it is possible to drill in that way. The disadvantages are that the casing sticks, it is distorted and sometimes broken. They use different equipment for drilling these crooked holes when they drill them intentionally that way. The equipment on Frenchman Hills was reasonably for keeping the hole as straight as possible. It is true that after my return from Frenchman Hills Mr. Jorgensen was called into conference and wrote up a story for publication. I think he submitted a proof to me and I read it.

(Testimony of Ralph Arnold.)

Exhibit A-34 I think is the proof of the newspaper story written by Mr. Jorgensen, which I think I proofread and approved page by page and penciled changes were made before I approved it. Some of the penciled changes in the typewritten manuscript are in my handwriting, others are not. I have no recollection of having seen the words "Peoples Progress" in the manuscript. I had the impression that the article was to be published in one of the regular newspapers. I do not recall that first sheet at all.

With reference to the first page, defendant's Exhibit A-34 on the first page there is none of my handwriting. I have no recollection of it. I have no recollection of any mention of "Peoples Progress" at the last trial. The second page of the exhibit does contain some of my corrections. The third page may have been a part of the general statement. I do not recognize it in detail. Page 4 has some of my corrections and page 5. Page 6 has no corrections. I do not recognize it. The white sheets appended with notes on them are not in my handwriting. I do not think I have seen them before.

Defendant's exhibit A-34 admitted after further cross-examination.

I think I did testify at the last trial that as the article was written it was an accurate reproduction of the [201] interview.

(Testimony of Ralph Arnold.)

Redirect Examination

By Mr. Hile:

Concerning drilling of wells it is possible that a well might be drilled without any oil showings, but further wells would be warranted. One well would not necessarily mean that you should abandon drilling. It depends on the kind of evidence you secure in your first well.

I have never seen as nice a camp as that of Donny Boy No. 1 in wild cat operation. A camp in a wild cat operation is usually set up on the basis of economy to find out what they have before they put in permanent buildings and equipment that are not absolutely necessary to the drilling of the first well. Assuming that I had known approximately \$240,000.00 had been put into the drilling at that time, I would have concluded there was a very limited possibility of their ever making a commercial well based on the cost. My definition of a commercial well is one that will amortize the investment. The production will pay the cost and return a reasonable profit on the invested capital.

In reference to Defendant's Exhibit A-34 I went over it rather hurriedly with Mr. Jorgensen because I was trying to catch a train that afternoon or evening and we went through it quickly. I was trying to gather every bit of information that I could for my report. I thought it was to be published in one of the daily papers in Seattle. I did not have any

(Testimony of Ralph Arnold.)

idea at that time that the enterprise was being financed by the public.

Re-Cross Examination

By Mr. Simon:

It is true that a test well is, generally speaking, more expensive to drill than subsequent wells, and in de- [202] termining commercial possibilities it would not be fair to make the determination on the basis of the test well alone if it was a field of considerable area. [203]

BERTHA SATHER,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I live thirteen *and half* miles west of Olympia. I bought leases from the Peoples Gas and Oil Company on August 17, 1935. My name was then Bertha Arnold. I have since married. I bought 21½ acres. I received plaintiff's exhibit 73 through the United States mail. It came in connection with my purchase of the lease. I paid \$62.50.

Letter and envelope addressed to Bertha Arnold and marked plaintiff's exhibit 73 admitted in evidence.

(Testimony of Bertha Sather.)

PLAINTIFF'S EXHIBIT No. 73

[Envelope]

[Return address]

Peoples Gas & Oil Development Co.,
Fourth and Pike Bldg.,
Seattle, Washington.

[Stamped]: Seattle Wash. Jul 16 7 PM 1936 3
Bertha M. Arnold
R. F. D. #1, Box 100
Olympia, Wn.

[Letterhead]

Peoples Gas and Oil Development Co.
of Washington
July 16th, 1936

Bertha M. Arnold
R. F. D. #1, Box 100
Olympia, Wn.

Dear Friend and Partner:

Having completed payments on your contract with the Peoples Gas and Oil Company, the leasehold acreage which you purchased from them has been assigned directly to us, thus avoiding the needless complication of putting it through your name. I am pleased to advise that this now completes our arrangement with you whereby you agreed to turn your lease over to us for development purposes, and enables you to be in our fully participating "Community Plan of Development."

The executed copy of the "Assignment and

(Testimony of Bertha Sather.)

Agreement" heretofore delivered has up to now been the only evidence of those participating rights, but to many people this has not been satisfactory for the reason that in case of the sale of all or part of such rights, they were called upon to undergo considerable expense and were confronted with a great deal of red tape and all sorts of complicated legal requirements, necessitating, in many instances, long and intolerable delays.

It has always been my sincere wish that nothing be left undone which would tend to serve the best interests of the P. G. & O. Program, as well as the greater convenience of my partners, and I certainly feel that all of my partners, including yourself, are entitled to a different and more easily negotiable evidence of their rights, free from any costly red-tape.

In order to bring this about without changing in any way the respective interests of all parties concerned, this company has been converted into a leaseholders' company. The actual drilling operations have been transferred to a company, formed by Dr. Meyers and myself, and known as "Peoples Drillers, Inc." Under this arrangement, no one may be in the Development Company except owners of participating rights such as yourself.

The Development Company owns the leases, and the full proportionate share previously agreed upon will be distributed to holders of participating rights,

(Testimony of Bertha Sather.)

Namely, Sixty-Five Per Cent of the Net Returns Received From Production,—under the same conditions as set forth in the “Assignment and Agreement” which you executed with this company.

In the furtherance of the above plan, the Development Company, by a resolution of its Board of Directors, authorized the issuance to holders of participating rights, residing in the State of Washington, no-par-value shares of the Peoples Gas and Oil Development Company, on the basis of eight (8) shares for each acre assigned, so that each holder of a participating interest will be certain to receive the number of shares to which he is rightfully entitled, and which in every case will be equivalent to the interests now held under the “Assignment and Agreement” with this company.

These shares are Non Assessable, and carry full voting privileges, and their issuance has been officially authorized by the Director of the Department of Licenses, State of Washington, under Permit issued on June 15, 1936.

It gives me great pleasure to advise that at a recent meeting of the Board of Directors, Mr. E. W. Jorgenson, former editor of The Spokane Press of Spokane, Washington—long a champion of the people of our State—was unanimously elected as Vice-President and Treasurer of the Peoples Gas and Oil Development Company. I shall continue to serve my partners in the capacity of President of the Development Company, and shall also con-

(Testimony of Bertha Sather.)

tinue in direct charge of our operations in Frenchman Hills as Vice-President of Peoples Drillers, Inc.

I should like to point out that in the past, before transfer of a portion or all of a participating right could be completed, it was necessary to make an assignment in triplicate before a Notary Public, incorporating legal descriptions, which frequently had to be passed upon by an attorney; then submitted to an abstractor for his verification, and finally recorded in the county in which the leasehold is located. Obviously, this procedure not only entailed considerable expense, but also required a great deal of time.

I have never lost sight of the important fact that when one of my partners transfers a part of his rights to someone else, a new friend and supporter of the P. G. & O. Program is thereby automatically created, and under the new plan you will be in position to make such transfer on practically a moment's notice by simply signing your name on the reverse side of the certificate in the presence of a witness. This is only one of the many advantages of having in your possession a more negotiable instrument, and is mentioned merely to give you some idea of the benefits to be derived by you.

Please understand that if you prefer you may retain the executed copy of the "Assignment and Agreement" which you now hold as evidence of your ownership of a participating interest. However, in view of the fact that in the acceptance of

(Testimony of Bertha Sather.)

the above shares your rights are Exactly The Same as you now have, inasmuch as they entitle you to Exactly The Same pro rata returns, I am sure that you will readily recognize the advantage accruing to you under the new arrangement.

Feeling certain that you will unquestionably wish to make this change as soon as possible, I am attaching hereto the proper form enabling you to receive your certificate for the number of shares to which you are entitled. If you will sign this form and return to us, Together With the Copy of the "Assignment and Agreement" Now In Your Possession, we shall have your certificate issued and forwarded to you without delay, and at absolutely no cost to you.

In consideration of the many thousands of interest holders who will, undoubtedly, be anxious to receive their certificates with a minimum of delay, I ask that you send in these two papers immediately, so that our office force may function with the greatest possible efficiency.

A stamped, self addressed envelope is enclosed for your greater convenience in returning these papers to us.

Thanking you again for the friendship, loyalty and confidence which you have so graciously extended towards our undertaking on Frenchman Hills, and assuring you that I shall always strive to serve the best interests of the P. G. & O. Pro-

(Testimony of Bertha Sather.)

gram and all of my partners, I am—with every good wish

Your sincere friend and partner,

BILL BROOME

William A. Broome,

President

Peoples Gas and Oil Development Company.

P. S. We have made arrangements with the Peoples Gas and Oil Company so that you may receive the free services of a Notary Public at any of their offices in the execution of the necessary papers.

WAB-S

[Endorsed]: Filed Oct. 16, 1942.

I received plaintiff's exhibit 74 through the United States mails. It is dated August 19, 1936. I received it several days after that through the mail. A certificate came in the envelope attached. I received it in connection with my dealings with the Peoples Gas and Oil Company. Plaintiff's exhibit 74 admitted in evidence.

Cross Examination

By Mr. Johnson:

I bought the leases from Mr. Whitesell. I had not attended any public meetings before that. I did not buy purely as a speculation. They did not

(Testimony of Bertha Sather.)

tell me that they might or might not find oil. I never saw Mr. Meyers, Mr. Simons or Mr. Markowitz. [204]

GEORGE P. HELM,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I live at Kelso, Washington. I made a contract to purchase a lease of the Peoples Gas and Oil Company. Plaintiff's Exhibit 75, for identification, I obtained from agents of the Peoples Gas and Oil. Exhibit 75, for identification, not admitted.

I have seen plaintiff's exhibit 76 before. That came in the mails in connection with my dealings with the Peoples Gas and Oil Company in January, 1936. It is dated January 24. Plaintiff's Exhibit 76, copy of "Peoples Progress" admitted in evidence.

(Mr. Sager called attention to the fact that it is the basis of Count No. 5 of the Indictment.)

Cross Examination

By Mr. Johnson:

I read part of exhibit "76". [205]

FELICITA CROSTA,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Sager:

I am a widow and live at 3517 East G Street, Tacoma. I lived there in 1935. I had occasion to buy leases through Lou Boldori, from the Peoples Gas and Oil Company and paid \$62.50, \$5.00 per month. Plaintiff's Exhibit No. 77 I received through the United States mail. It was delivered to me at 3570 East G Street, my address in Tacoma, in connection with my purchase of the leases.

Plaintiff's exhibit 77 admitted in evidence.

PLAINTIFF'S EXHIBIT No. 77

[Pencil Notation]: (OA 1) 7-0

[Letterhead]

Peoples Gas and Oil Development Co.
of Washington
April 29th, 1936

Mrs. Felicita Crosta
3570 East G Street
Tacoma, Washington

Dear Friend and Partner:

This will acknowledge receipt of your executed assignment to the Peoples Gas and Oil Development Company of an oil and gas lease, in accordance with the legal description contained therein. It is with pleasure that we receive this assignment.

(Testimony of Felicita Crosta.)

We are informed that you have purchased this lease from the Peoples Gas and Oil Company under a "Contract to Purchase," and we acknowledge receipt of your assignment with the understanding that you will complete all of the terms of your contract with the Peoples Gas and Oil Company, which is necessary in order that your rights may be completed.

Enclosed you will find an executed copy of your assignment to us. Your acceptance of the same acknowledges the above understanding, and makes this letter a part of the agreement between us.

When you have completed your payments and have received your recorded oil and gas lease assignment from the Peoples Gas and Oil Company, we will expect you to notify us to that effect.

The value of your friendship and support of our great development project in Frenchman Hills cannot be overestimated, and Doc Meyers, our thousands of partners and I are most happy to know that we can always count on you and your family among the great number of our Washington friends who are for "Oil in Washington".

We trust that the day is not too far distant when

(Testimony of Felicita Crosta.)

we may mutually rejoice over the success which we hope will crown our efforts.

Very sincerely yours,

PEOPLES GAS AND OIL DEVELOPMENT CO.

BILL BROOME

William A. Broome,

WAB:mn

President

[Endorsed]: Filed Oct. 16, 1942.

I bought a second lease for two *and half* acres. It was supposed to cost \$87.50. I paid \$5.00 per month, but not the full amount.

No Cross Examination. [206]

MARY N. BLACK

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live at Seattle, Washington and lived there in 1934 and 1935. I bought leases from the Peoples Gas and Oil Company on three different occasions. Before purchasing I attended three or four public meetings at Eagles Hall in Seattle. Broome always spoke on those occasions and I am not sure whether the first three or four were also attended by Dr. Meyers and Mr. J. F. Simons or not, but I heard them speak many times.

Government's Exhibit 78 is the first purchase. I

(Testimony of Mary N. Black.)

believe that was mailed to me. Plaintiff's exhibit 78, being a lease, admitted in evidence.

We attended the meetings very regularly and we were invited to visit the officials at their offices so in June, 1935 my husband and I called on Mr. Simons and had a long talk with him in the evening. He told us much of what we had heard in the meetings before, that Dr. Meyers was financing this project entirely, that all the money the investors put into it was spent for oil consciousness and for a program they had in mind for the following ten years; that Dr. Meyers was the financier, he would pay for everything regardless of how many wells it would take to test the structure. We mentioned the fact that we had five bonds totaling \$2500. Mr. Simons advised us to sell the bonds even at a great discount. That was during the depression. He said we really owed it to our children to make the investment. We told [207] him that we would be unable to pay our obligations, such as our annuity insurance if we did not retain these bonds because of the dividends from them.

We went to Spokane and there talked with Simons' brother, M. F. Simons. We did not want to part with the bonds at that time, but we bought more leases. I believe at that time 15 acres. I do not remember the price, but they had gone up. That was in June, 1935.

In November, 1935 I went to see Mr. Simons at his office alone. We had been attending meetings right along. Mr. Broome had made the statement that they would drill as many holes as necessary

(Testimony of Mary N. Black.)

even though there would be so many that the jack-rabbits couldn't cross the structure without falling into them. Mr. Broome said he was at least 99% sure. They told us that since Dr. Meyers was paying for all of it and being so sure of it that anyone who had any money at all should invest in this to safeguard his own future and help the State of Washington.

“So that is why I went to see Mr. Simons again; and the talk of these bonds came up again, and I told him that I would have to be 100% sure before I would part with them, because I would lose my insurance and practically every other thing that we were trying to do just outside of a mere living. And he told me at the time, and he opened his drawer, his desk drawer, and he had a roll in there. He said it was a report from one of his consulting geologists and I don't remember now if it was Mr. Arnold or some one else, but it was the last geologist that had been there on the structure. He said, ‘I wish you could see this.’ He said, ‘I can't let you see it; it is confidential; but if you could see it,’ he said, ‘you wouldn't hesitate one moment.’ He said ‘I [208] advise you as I would advise my own sister to sell these bonds, even though you have to sell them at 10 cents on the dollar, but sell them and take more leases’. And I still hesitated. And he said—I said, ‘Well, you feel as though there isn't any gamble at all, do you?’ He said, ‘You are not sure that you are going to arrive home safely this afternoon, are you?’ I said ‘No’. ‘Well’, he said, ‘It is that kind of a gamble’.

(Testimony of Mary N. Black.)

We turned over the bonds to Mr. Simons and received 35 acres more of leases. There were some odd dollars left, that he gave me, just a few dollars.

I attended one meeting in 1935 when defendant Meyers was present. Mr. Simons told us that Dr. Meyers would finance all and he said he was doing it because he had married a girl from Washington, that he did not need the money, he was a philanthropist and wanted to do something.

After he had retired from the platform Dr. Meyers came on. He took the applause and told us that he would not accept one penny on the returns, but he would take his money back when production came in and all the rest of it would go to Washington charities. It was said at that meeting that Meyers was a capitalist and had a great deal of money, and that while he did not have anything directly to do with the building of the Golden Gate Bridge, that he was the one that put through the legislation. He had no part in building it.

I recall now a public meeting with reference to the conversion of leases into stock. All the officials were there again. They said the reason for the change was that it was difficult to split up leases and sell portions of them and when the well came in the oil profits would be so great that people sometimes would want to sell a part of [209] what they owned and the only way that could be accomplished would be through splitting up the stock. It would be too difficult to hold leases and try to do it that way.

I remember attending meetings when they talked

(Testimony of Mary N. Black.)

about the investment in leases being a gamble, and they would always say, before a well was brought in it was a gamble, but Broome said he was 99% sure, that the well would produce. He said we should have our heads examined if we did not invest in the well, if we had any money. Relative to the amount we invested I had paid \$2500.00 for the bonds. We at first paid \$340.00. Then the third time when we bought the prices had raised and we bought 15 acres. I believe \$3500.00 is conservative. We were supposed to be limited to 80 acres, I believe, because we had two children and the two of us, but I am not sure that we were limited to that.

Cross Examination

By Mr. Simon:

When I said we had invested \$3500.00 I meant the bonds were \$2500.00 par. They did not bring us that much when they were sold. Mr. Simons said they had brought about \$1100.00, but I was counting the bonds at par when I said \$3500.00. The bonds were marketable bonds on apartment houses and new buildings downtown, but were not listed bonds. They bore five, six and seven percent interest and that interest was being paid.

It was said that the reason that Dr. Meyers wanted the leases sold was that he wanted a background of people, who would, if the project was successful, be a source of political strength. He wanted to sell only to Washington people and wanted to sell only twenty acres to one person so as to get as wide a distribution as possible. I do not think that the leases were to be sold only to

(Testimony of Mary N. Black.)

people who [210] could afford to lose because many people bought who could not afford.

I cannot state positively whether Dr. Meyers was present when Broome made the statement that he was 99% sure. He made that statement a great many times and I attended a great many meetings. I did not make a written record of it, but Broome always followed up his statement by saying that we should have our head examined if there was not some way we could buy a lease. I heard Dr. Meyers say that he had an ambition to do two things for the State of Washington; to test the Frenchman Hills structure and to complete the Cascade Tunnel project and that is why I was deeply disappointed that he did not finish the well.

Dr. Meyers never tried to sell me any leases or stock personally, but he sold me through the confidence I had in him. I had confidence in Dr. Meyers and that is why I bought. They said that this was a speculation and a gamble and if you could not afford to lose the money to keep it in your pocket, but Mr. Simons knew I could not afford it and he took my money just the same. I do not know anything about whether Dr. Meyers knew of my personal transactions with Mr. J. F. Simons.

Redirect Examination

By Mr. Hile:

In the conversations I had with Mr. Simons he told me about Dr. Meyers, the defendant, and I relied on that absolutely. I attended the meetings held in Seattle except a few. They told us there was an agreement between Simons and Dr. Meyers

(Testimony of Mary N. Black.)

that he would finance the test wells, all of them, as many as were necessary and that he wanted our support for a legislative background. Of the children for whom we bought leases, one was an infant and the other perhaps 3. [211]

Re-cross Examination

By Mr. Simon:

There was nothing in the form of the contract executed in the name of the children to indicate that they were minor or infants, unless my husband's or my signature appeared to indicate that they were minors. We had to sign for them. My husband is a civilian employee of the Navy.

Re-redirect Examination

By Mr. Hile:

My husband was a machinist at the time we bought leases.

Simons told me personally that Dr. Meyers had brought Simons and Mr. Markowitz up here. He said they had come up here to create oil consciousness, that they did not care to leave California because it had been very good to them, but that they thought a great deal of Dr. Meyers and they liked the project he was interested in and they thought it was a worthy one.

Re-re-cross Examination

By Mr. Simon:

I do not think I had any conversation with Mr. William Markowitz. Sam Markowitz is the one that came to the house and asked us if we wanted to discount our account. [212]